

**NEW  
MEXICO  
REGISTER**



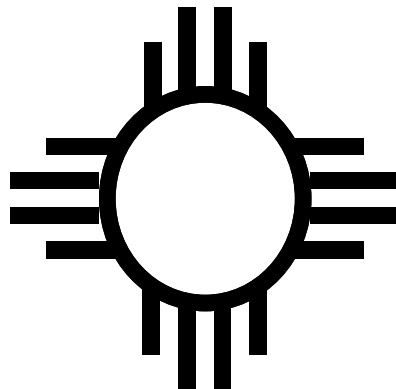
Volume XIX  
Issue Number 10  
May 30, 2008



# **New Mexico Register**

**Volume XIX, Issue Number 10**

**May 30, 2008**



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  
2008

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# New Mexico Register

Volume XIX, Number 10

May 30, 2008

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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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## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING AND MEETING

On **July 9, 2008 at 5:30 PM**, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) at the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. The hearing will address a proposal to adopt 20.11.82 NMAC, *Rulemaking Procedures-Air Quality Control Board*.

The purpose of the hearing is to receive testimony on a proposal to adopt 20.11.82 NMAC, *Rulemaking Procedures-Air Quality Control Board*. This new regulation will formalize the rules of procedure for the Board that will govern rulemaking/regulation hearings before the Air Board, except to the extent that 20.11.82 NMAC is inconsistent with specific procedures in governing law.

After the hearings close the Air Board is expected to convene its regular monthly meeting during which they will consider adopting the proposed 20.11.82 NMAC, *Rulemaking Procedures-Air Quality Control Board*.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Federal, State, and local delegation authorize the Air Board to administer and enforce the Clean Air Act, the New Mexico Air Quality Control Act, local air quality regulations, 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 at this hearing is asked to submit a written notice of intent to testify (NOI) before 5:00pm on June 23, 2008 to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Room 3023, 400 Marquette Avenue NW. The NOI shall identify the name, address, and affiliation of the person testifying.

In addition, written comments to be incorporated into the public record for the July 9, 2008 hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on July 2, 2008. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [jamend@cabq.gov](mailto:jamend@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 Ms. Janice Amend electronically at [jamend@cabq.gov](mailto:jamend@cabq.gov) or by phone (505) 768-2601.

**NOTICE FOR PERSON WITH DISABILITIES:** If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

#### Notice of Proposed Rulemaking

The Economic Development Department ("EDD or Department") hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rules:

5.5.50 NMAC (Industrial Development Training Program); and adopting:

A public hearing regarding the rules will be

held on Tuesday, June 10, 2008 in the conference room of First Community Bank, located at the Pan Am Building, 5501 Wilshire NE, Albuquerque, NM. The time for the hearing on the proposed rules is 9:00 AM MDT.

Interested individuals may testify at the public hearing or submit written comments regarding the proposed rulemaking relating to the Job Training Incentive Program to Therese R. Varela, JTIP Program Manager, New Mexico Economic Development Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico 87504, or [therese.varela@state.nm.us](mailto:therese.varela@state.nm.us) (505) 827-0323, fax (505) 827-1672. Written comments must be received no later than 5:00 pm on June 6, 2008. The proposed rulemaking actions specific to the Job Training Incentive Program may be accessed on the Department's website ([www.gonm.biz](http://www.gonm.biz)) or obtained from Therese Varela at the contact above.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this hearing are asked to contact Therese Varela as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

**NEW MEXICO ENVIRONMENTAL  
IMPROVEMENT BOARD  
NOTICE OF PUBLIC HEARING TO  
CONSIDER PROPOSED REVISION  
OF THE DRINKING WATER REGU-  
LATIONS, 20.7.10.100 NMAC and  
20.7.10.101 NMAC.**

The New Mexico Environmental Improvement Board ("Board" or "EIB") will hold a public hearing on August 4, 2008 at 10:00 a.m. and continuing thereafter as necessary in Room 317, State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to August 4, 2008 and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing is to consider proposed amendments to 20.7.10.100 NMAC, and 20.7.10.101 NMAC of the Drinking Water Regulations. The New Mexico Environment Department ("NMED") is the

proponent of these regulations.

The proposed amendments relate to the adoption of new federal rules in accordance with state primacy requirements, including (i) adoption of the Ground Water Rule, (ii) adoption of the Lead and Copper Rule 2007 Short-term Revisions and Clarifications, (iii) and update the date restriction of the drinking water secondary standards.

Please note formatting and minor technical changes in the regulations may occur. In addition, the Board may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Board and evidence presented at the hearing.

The proposed regulations may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. Copies of the proposed regulations may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at [joyce\\_medina@nmenv.state.nm.us](mailto:joyce_medina@nmenv.state.nm.us). Please refer to Docket No. EIB 0803(R). The proposed regulations can also be found on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us/dwb/index.htm>. Written comments regarding the new regulations may be addressed to Ms. Medina at the above address, and should reference docket number EIB 0803(R).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, NMSA 1978, Section 74-1-9, and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;

- identify each technical witness that the person intends to present and state the qualifications of the witness, including a

description of their education and work background;

- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;

- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and

- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on July 18, 2008, and should reference the name of the regulation, the date of the hearing, and docket number EIB 0803(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina  
Board Administrator  
NMED Boards and Commissions  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2153  
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley at the Personnel Services Bureau by July 21, 2008. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

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## NEW MEXICO MAIN STREET REVOLVING LOAN COMMITTEE

### MAIN STREET REVOLVING LOAN COMMITTEE STATE HISTORIC PRESERVATION DIVISION NOTICE OF PROPOSED RULEMAKING

The Main Street Revolving Loan Committee will convene a public hearing on Tuesday, June 24, 2008, on the proposed new rule under Title 12, Trade, Commerce and Banking, Chapter 21, Community Revitalization and Development, Part 2, Procedures of the Main Street Revolving Loan Committee. The hearing will be held at 10:00 AM in the Conference Room in the Office of the Secretary, Bataan Memorial Building, 407 Galisteo Street, Suite 260, Santa Fe, New Mexico.

Copies of the proposed rule 12.21.2 NMAC may be obtained by calling the Historic Preservation Division at (505) 827-6320 between 8:00 AM and 5:00 PM Monday through Friday, by email to [dorothy.victor@state.nm.us](mailto:dorothy.victor@state.nm.us), or from the HPD website ([www.nmhistoricpreservation.org](http://www.nmhistoricpreservation.org)). Interested persons may testify at the hearing or submit written comments on the proposed amendments to the Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, or via fax to (505) 827-6338. Written comments must be received by 5:00 PM on Friday, June 20, 2008; however, the submission of written comments as soon as possible is encouraged. Written comments will be given the same consideration as oral testimony at the public hearing. If you need a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact the Historic Preservation Division at (505) 827-6320 or [dorothy.victor@state.nm.us](mailto:dorothy.victor@state.nm.us) at least 48 hours prior to the hearing.

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**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on June 30, 2008, from 10:00 a.m. to 12:00 p.m.. The purpose of the public hearing will be to obtain input on the following rule:

<b>Rule Number</b>	<b>Rule Name</b>	<b>Proposed Action</b>
6.30.10 NMAC	FINAL COURSE AND OTHER STUDENT GRADE CHANGES	Adopt new rule

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Ms. Mary Deets, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([maryh.deets@state.nm.us](mailto:maryh.deets@state.nm.us)) (505) 827-6641 (telefax (505) 827-6681).

Written comments must be received no later than 5:00 pm on June 30, 2008. However, the submission of written comments as soon as possible is encouraged.

The proposed rulemaking action may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Mary Deets, Office of General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([maryh.deets@state.nm.us](mailto:maryh.deets@state.nm.us)) (505) 827-6641(telefax (505) 827-6681). The proposed rule will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Deets as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO COMMISSION OF PUBLIC RECORDS**

**NOTICE OF REGULAR MEETING**

The NM Commission of Public Records has scheduled a regular meeting for Thursday June 19, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, 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 hearing, please contact Antoinette L. Solano at 476-7902 by June 9, 2008. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

**NOTICE OF RULEMAKING**

The Commission of Public Records may consider the following items of rulemaking at the meeting:

1.11.2 NMAC Real Property Electronic Recording

**Records and Retention and Disposition Schedules**

**Repeal and Replacements**

- 1.18.350 NMAC ERRDS, General Services Department
- 1.18.770 NMAC ERRDS, Corrections Department
- 1.18.790 NMAC ERRDS, Department of Public Safety
- 1.18.805 NMAC ERRDS, Department of Transportation

**Amendments**

- 1.18.446 NMAC ERRDS, New Mexico Medical Board
- 1.18.465 NMAC ERRDS, Gaming Control Board

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**BEFORE THE NEW MEXICO SUPERINTENDANT OF INSURANCE**

**IN THE MATTER OF** )  
**AMENDING 13.14.16 NMAC** )  
**AGENT’S STATISTICAL REPORT** ) **Docket No. 08-00095-IN**  
**AND 13.14.17 NMAC UNDERWRITER’S** )  
**STATISTICAL REPORT** )  
 \_\_\_\_\_ )

**AMENDED NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER RESETTING HEARING**

**THIS MATTER** comes before the New Mexico Superintendent of Insurance ("Superintendent") pursuant to NMSA 1978 § 59A-30-8(B) to consider amendments to the statistical reports required to be filed annually by the New Mexico title insurance agents and underwriters. Being fully advised,

**THE SUPERINTENDENT FINDS AND CONCLUDES:**

During the 2007 Annual Title Insurance Hearing (Docket No. 07-00279-IN) the New Mexico Attorney General filed a request for the Superintendent to issue data calls to title insurance agents and underwriters to gather additional data for use in setting New Mexico Title Insurance Rates. NMSA 1978 §59A-30-7 requires the Superintendent to promulgate rules, including rules providing statistical plans for use thereafter by all title insurance agents and underwriters in the recording and reporting of loss and expense experience so that the experience may be made available to him at least annually in such form and detail as may be necessary to aid him in promulgating premium rates. The Attorney General's request was filed after the date set for filing non-rate proposals in the 2007 Annual Title Insurance Hearing. After considering oral arguments from the parties, the Hearing Officer order that the Attorney General's request for additional data calls would be more appropriately considered in a new rulemaking to be held in 2008. On the basis of that set forth above, the Superintendent issued a Notice of Hearing on Proposed Rulemaking on March 25, 2008 ("Notice") setting forth deadlines for submission of proposed amendments to 13.14.16 and 13.14.17 NMAC and responses thereto and setting the matter for informal public hearing on May 14, 2008 with proposed rule changes to be filed by April 21, 2008 and responses thereto by May 5, 2008.

On April 21, 2008, the Attorney General filed with the Superintendent a proposal for amendments to 13.14.16 NMAC, Agent's Statistical Report and 13.14.17 NMAC, Underwriter's Statistical Report for consideration by the Superintendent in a mid-year hearing to be held before the 2008 Title Insurance Hearing in response to the Notice (New Mexico Attorney General's Proposed Rule of April 21, 2008).

It was further ordered in that Notice that Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978 §59A-4-16. As of the date issuance of this Amended Notice, Staff has not complied with that order such that it is no longer

possible for publication of the Notice to occur at least twenty (20) days in advance of the informal hearing date as required by the above referenced statute. This proceeding is therefore procedurally defective in failing to provide adequate notice to the public of the May 14, 2008 hearing such that it would not be proper for the Superintendent to hold an informal public hearing on that date.

**IT IS THEREFORE ORDERED** that the informal public hearing on this matter currently set for May 14, 2008 and the response deadline of May 5, 2008 as set forth in the Notice are hereby **VACATED**.

**IT IS FURTHER ORDERED** that the informal hearing on this matter is rescheduled for **June 27, 2008 at 9:30 AM** and continuing thereafter as necessary in the Public Regulation Commission, 4th Floor Hearing Room PERA Bldg., corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe NM for the purpose of receiving oral public comments including data, views or argument. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time and place since hearings are occasionally rescheduled.

**IT IS FURTHER ORDERED** that the deadline for submitting proposals to amend 13.14.16 and 13.14.17 NMAC as set forth in the Notice is extended until June 3, 2008. Submissions of proposals to amend such rules previously filed with the Superintendent on or before April 21, 2008 shall be considered and are not required to be re-filed. Proposed amendments to previously timely filed proposals will also be considered if filed on or before June 3, 2008. Those interested persons having not previously submitted a proposal on or before April 21, 2008 are not precluded from doing so and may file such proposal(s) at any time following issuance of this order and on or before June 3, 2008.

**IT IS FURTHER ORDERED** that the deadline for submitting responses to proposals to amend rules 13.14.16 NMAC as set forth in the Notice is extended until **June 17, 2008**. Timely submissions of responses previously filed on or before May 5, 2008 shall be considered and are not required to be re-filed. Proposed amendments to previously timely filed responses will also be considered if filed on or before June 17, 2008. Those interested persons having not previously submitted a response to proposal (s) on or before May 5, 2008 are not precluded from doing so and may file such proposal(s) at any time following

issuance of this order and on or before June 17, 2008.

The New Mexico Attorney General, Insurance Division Staff and all other persons wishing to submit proposals to amend the above reference rules or amendments to previously submitted timely proposals or responses thereto shall file the following items in the docket on or before that date:

1. written proposal(s) and an electronic word document version of each proposal. The electronic version may be filed in the docket on a diskette or e-mailed to [Charles.Denton@state.nm.us](mailto:Charles.Denton@state.nm.us) and
2. 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 the specific language to implement the proposal.

**IT IS FURTHER ORDERED THAT** all interested parties may file written comments on proposals on or before **June 17, 2008**. 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.

**IT IS FURTHER ORDERED THAT** proposals and comments will be available for public inspection by downloading from the Public Regulation Commission's website: [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us) under Proposed Rules, Insurance or during regular business hours at the Public Regulation Commission's docketing office. An original and two copies of all proposals comments or 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 PERA Bldg., Corner of Paseo de Peralta and Old Santa Fe Trail, NM and its mailing address is P.O. Box 1269, Santa Fe NM 87504-1269.

**IT IS FURTHER ORDERED** that the Superintendent may require the submission of additional information, make further inquiries and modify the dates and procedures, if necessary, to provide for a fuller record and more efficient proceeding.

**IT IS FURTHER ORDERED** that Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978 § 59A-4-16 and other applicable law.

**PLEASE BE ADVISED** that the

New Mexico Lobbyist Regulation Act NMSA 1978 2-11-1 *et seq.* regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides for penalties for violation of its provisions. For more information and registration forms contact the Secretary of States' Office, State Capitol Building, Room 420, Santa Fe, NM 87503 (505) 827-3600.

**PLEASE BE ADVISED THAT** 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 a hearing, may contact the Docketing Office at (505) 827-4526. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to the Docketing Office.

**DONE AND ORDERED this \_\_\_ day of May, 2008.**

**Morris J. Chavez**  
**Superintendent of Insurance**

**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY**

**NOTICE**

**N.M. DEPARTMENT OF PUBLIC  
SAFETY  
PUBLIC HEARING**

The Department of Public Safety will be holding a public hearing for the sake of receiving comments on proposed amendment revisions to 10.5.400.8 NMAC, the State Police Regulation pertaining to Vehicles and Equipment. The hearing will be held at 9:00 A.M. on June 27, 2008, at the auditorium of the NM Law Enforcement Academy 4491 Cerrillos Road, Santa Fe, New Mexico.

Proposed amendments to the rule include, but not limited to, deleting subsection E. which restricts to no more than 25 miles

officer use of a department vehicle to commute between home and station.

Copies of the proposed amendments may be obtained by calling Major Jimmy Salmon, June 27, 2008 at 505.827-9173. Comments on these amendments are invited. Oral comments may be made at the hearing, or written comments may be submitted by mail to Major Jimmy Salmon at the Department of Public Safety, Standards Bureau, PO Box 1628, Santa Fe, NM 87504-1628, no later than June 20, 2008. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Major Salmon at least ten (10) days prior to the hearing.

**NEW MEXICO  
DEPARTMENT OF PUBLIC  
SAFETY**

**NEW MEXICO DEPARTMENT OF  
PUBLIC SAFETY  
NOTICE OF PUBLIC HEARING**

The New Mexico Department of Public Safety (NMDPS) will be holding a Public Hearing for the sake of receiving comments on proposed amendments to Title 10, Chapter 10, Part 2 of NMAC, the application procedures governing the Edward Byrne Memorial Justice Assistance Grant Program. The hearing will be held at 1:30 P.M. on Wednesday, July 9, 2008 at the New Mexico Law Enforcement Academy Auditorium, 4491 Cerrillos Road, Santa Fe, New Mexico 87507. Proposed amendments to the Rule include, but are not limited to, changes, additions, deletions, and clarifications of the application process.

Copies of the proposed amendments shall be made available to the public ten days prior to the Public Hearing and may be obtained by calling 505-827-9112. Comments on these amendments are invited. Oral comments may be made at the hearing, or written comments may be submitted by mail to the Grants Management Bureau, New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, no later than July 14, 2008. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Lynette Borrego, 505-827-9112 at least ten (10) days prior to the hearing.

**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

**NEW MEXICO  
DEPARTMENT OF  
CULTURAL AFFAIRS  
HISTORIC PRESERVATION  
DIVISION**

Explanatory Paragraph: This is an amendment to 4.10.11 NMAC, "Issuance of Permits to Excavate Unmarked Human Burials in the State of New Mexico" in Paragraph (2) of Subsection D of 4.10.11.9 NMAC, effective May 30, 2008. The amendment will eliminate confusion inadvertently created when similar language was recently replaced in a companion rule at Paragraph (3) of Subsection B of 4.10.8.14 NMAC, "Permits to Conduct Archaeological Investigations on State Land." The amendment will clarify that costs incurred in the execution of activities conducted under an unmarked human burial shall be borne by the permittee or the permittee's client or sponsor.

**4.10.11.9 PERMITTING PROCEDURES AND REQUIREMENTS PERTAINING TO THE REMOVAL OF HUMAN BURIALS:**

- ...
- D. Permit stipulations.
- (1) Recipients of burial excavation permits issued by the permitting authority agree to abide by all stipulations contained in this regulation and any special stipulation that may be imposed by the permitting authority.
- (2) ~~Any~~ Costs incurred in the execution of the activities conducted under the permit shall be borne by the permittee or the permittee's client or sponsor.
- (3) The state of New Mexico, including its bureaus and employees and landholding agencies, shall be held blameless for any and all events, deeds or mishaps resulting from the activities of the permittee, regardless of whether or not they arise from operations authorized under the permit.
- (4) The permitting authority shall determine, in consultation with any living relative, conditions for the appropriate disposition of the human remains and any or all of the associated funerary objects, material objects or artifacts. All conditions for final disposition will become stipulations of the permit.
- (5) Documentation of all funerary objects, material objects, or artifacts associated with a human burial will be provided to the SHPO, consistent with provisions in Subsection D of 4.10.11.10 NMAC. The permittee will ensure that all documented items are disposed of in accordance with the

disposition plan. The permit will also stipulate measures to ensure that the burials and associated funerary objects, material objects, or artifacts remain undisturbed after disposition.

(6) If the excavation is delayed as a result of unforeseen circumstances and cannot be completed within the permit period, the permittee shall contact the SHPO in writing to request an extension of the term of the permit. This request must be received by the SHPO prior to the expiration date of the permit in order to be considered.

(7) If the excavation is discontinued and cannot be completed as a result of unforeseen circumstances, the permittee shall notify the SHPO in writing to request a cancellation of the permit. Disposition of any human remains and associated funerary objects, material objects or artifacts collected during the excavation conducted under the permit and of copies of all written and photographic records resulting from a discontinued excavation will be determined by the permitting authority.

(8) Failure by a permittee to comply with these and any additional special stipulations set forth in this regulation or on the permit itself shall be considered adequate reason for revocation of a permit and denial of future permits.

(9) If fieldwork is not begun within the permit period, and an extension has not been requested as described above, the permit shall become void at the end of the permit period.  
[9-15-89; 4.10.11.9 NMAC - Rn, 4 NMAC 10.11.9, 1/1/08; A, 05/30/2008]

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION**

LOCAL GOVERNMENT DIVISION

**TITLE 2 PUBLIC FINANCE  
CHAPTER 2 AUDITS OF GOVERNMENTAL ENTITIES  
PART 3 BUDGET CERTIFICATION OF LOCAL PUBLIC BODIES**

**2.2.3.1 ISSUING AGENCY:** State of New Mexico Department of Finance and Administration, Local Government Division.  
[2.2.3.1 NMAC - N, 6/1/2008]

**2.2.3.2 SCOPE:** All local public bodies required to obtain budget approval from the local government division.  
[2.2.3.2 NMAC - N, 6/1/2008]

**2.2.3.3 STATUTORY AUTHORITY:** Sections 6-6-1 through 6-6-19 NMSA 1978 and Section 9-6-5E NMSA 1978.  
[2.2.3.3 NMAC - N, 6/1/2008]

**2.2.3.4 DURATION:** Permanent  
[2.2.3.4 NMAC - N, 6/1/2008]

**2.2.3.5 EFFECTIVE DATE:** June 1, 2008 unless a later date is cited at the end of a section.  
[2.2.3.5 NMAC - N, 6/1/2008]

**2.2.3.6 OBJECTIVE:** 2.2.3 NMAC codifies required budgetary and financial reporting by local public bodies to the local government division supported by timely audits as of the previous fiscal year submitted to the state auditor's office and the local government division. The intended result is to promote submission of budgets and reports to the local government division by local public bodies with documentation that provides assurance that the financial statements and position of the local public body have been audited in accordance with requirements of the New Mexico state auditor found in 2.2.2.1 through 2.2.2.14 NMAC, the requirements for contracting and conducting audits of agencies, ("the audit rule"). The purpose of coordinating the submission of audits timely from the previous fiscal year with the budget certification process is two-fold: 1) to allow for corroboration of items in the previous fiscal year audit with the budget and financial reports submitted to the local government division, and 2) to require correspondence and other documentation that can be maintained in a record for reference by government officials and the public.  
[2.2.3.6 NMAC - N, 6/1/2008]

**2.2.3.7 DEFINITIONS:**

A. "Account" means a double entry bookkeeping of assets, liabilities, income and expenses with debit and credit entries on ledger pages or other media which are posted to record a change(s) in value.

B. "Conditional budget certification" means the certification of the budget of a local public body but with specified conditions requiring compliance by the local public body in order to receive budget certification and means that the local public body is operating without final budget certification, as defined by Subsection F of 2.2.3.7 NMAC.

C. "Deficit" means any fund where its budget or financial reports reflect more expenditures than revenues and

cash balances available to legally pay for them.

D. "Emergency" means a natural or man made event that poses an immediate danger or threat to public health, welfare and safety.

E. "Extenuating circumstances" means documented situations, conditions or events that hinder or delay a local public body from complying with the local government division's requirements and timelines for submitting budgets, financial reports and audits.

F. "Final budget certification" means budget approval by a local government division official in accordance with Section 6-6-2 NMSA 1978.

G. "Fund" means a group of related accounts that are self balancing within their group as defined by the government accounting standards board (GASB). A fund is not an account.

H. "Local government division" is the division of the state of New Mexico department of finance and administration with budgetary and fiscal oversight responsibilities and authority over local public bodies.

I. "Local government division official" means any employee or public officer of the local government division of the New Mexico department of finance and administration.

J. "Local public body" means every political subdivision of the state which expends public money from whatever source derived, including but not limited to any county, incorporated municipality, or special district, land grants registered with the New Mexico secretary of state's office. Also under the definition are mutual domestic water associations, soil and water conservation districts, water and sanitation districts, watersheds, draws, medical clinics, hospitals, hospital districts, regional transportation districts, flood control authorities, natural gas associations, public improvement districts, and regional housing authority districts if required by the audit rule.

[2.2.3.7 NMAC - N, 6/1/2008]

### **2.2.3.8 UNTIMELY ANNUAL AUDITS AND BUDGET CERTIFICATION:**

A. Pursuant to Section 6-6-2 NMSA 1978, budgets shall be submitted by the local public body to the local government division. Receipt of the most current audit(s) that were required to be conducted and submitted for review per the New Mexico state auditor's required report due dates for the previous fiscal year(s) shall be confirmed by the local government division. The local government division, by letter to the local public body, shall inform the governing body of the local public body

and other state public officers, elected and appointed, of the need for corrective action, in accordance with Subsection E of 2.2.3.8 NMAC by the local public body when previous fiscal year audit(s) have not been submitted. During the corrective action process, the local government division may grant conditional budget certification to the local public body.

B. The local government division shall identify and report to state public officers a list of local public bodies that have failed to contract with an independent public auditor for its annual audit. The identification shall include reasons why the local public body has failed to obtain an audit contract. The identification shall also report on whether or not a line item of the amount in the preliminary and final executed budgets has been included for the cost of the annual audit of the local public body.

C. When the cause of the delay is due to the independent public auditor's inability to complete the audit, the local public body will communicate this in writing to the local government division and to the state auditor.

D. When the cause of the delay is due to the inability of the local public body to make progress payments on the contract between the local public body and the independent public auditor, the local public body shall communicate this by letter to the local government division and to the state auditor. The local public body shall explain why progress payments have not been made, when they will be made and whether a shortage of funds exists.

E. Any necessary corrective action shall begin with a meeting and continue with follow up meetings if needed, between officials of the local public body and representatives of the local government division and the state auditor's office to consider any extenuating circumstances. The meeting(s) shall address the extenuating circumstances, including but not limited to, the documented reason(s) why the required annual audit has not been conducted or completed. A plan for corrective actions shall be developed and agreed to in writing by officials of the local public body, the local government division and the state auditor's office, and signed by all the parties. The local public body will report monthly to the local government division and to the state auditor's office on the progress of the corrective action plan, until the required annual audit is completed and the local public body receives budget certification or conditional budget certification if there are other issues or deficits in the budget which may necessitate conditional budget certification.

F. The local public body shall communicate in writing to the local government division and to the state auditor

when it has completed its required audit(s) and the local government division shall certify the local public body's interim and final budgets upon confirmation by the state auditor's office that the required audit has been submitted to the state auditor's office for review and publication, unless there are other issues or deficits in the budget which may necessitate conditional budget certification.

[2.2.3.8 NMAC - N, 6/1/2008]

### **2.2.3.9 NON-COMPLIANCE BY LOCAL PUBLIC BODIES:**

If the local public body does not comply with this rule to bring its annual audit(s) into compliance with the audit rule as it pertains to timeliness of submission, the local public body may only receive conditional budget certification and final budget certification shall be withheld until the corrective action plan process set forth in Subsection E of 2.2.3.8 NMAC has been completed to the satisfaction of the local government division unless there are other issues which may necessitate conditional budget certification. In addition, the local government division may provide information regarding audits not in compliance with the audit rule as it pertains to timeliness of submission, to any funding entity, including but not limited to the legislature or the community development block grant council. The local government division will take measures to ensure that enforcement of the rule does not hinder the delivery of financial resources in emergency situations, conditions or events.

[2.2.3.9 NMAC - N, 6/1/2008]

**HISTORY OF 2.2.3 NMAC:** [Reserved]

## **NEW MEXICO DEPARTMENT OF HEALTH**

### **TITLE 7 HEALTH CHAPTER 37 CLEAN INDOOR AIR PART 2 CERTIFICATION OF CIGAR BARS**

**7.37.2.1 ISSUING AGENCY:** New Mexico Department of Health, Public Health Division.

[7.37.2.1 NMAC - N, 05/30/2008]

**7.37.2.2 SCOPE:** These rules apply to all entities seeking to operate under the cigar bar exemption to the smoking prohibition of the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq.

[7.37.2.2 NMAC - N, 05/30/2008]

**7.37.2.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the following statutory authorities: Section 9-7-6 E of the

Department of Health Act, and Section 24-16-3 B(2) of the Dee Johnson Clean Indoor Air Act.

[7.37.2.3 NMAC - N, 05/30/2008]

**7.37.2.4 DURATION:** Permanent.

[7.37.2.4 NMAC - N, 05/30/2008]

**7.37.2.5 EFFECTIVE DATE:** May 30, 2008, unless a later date is cited at the end of a section.

[7.37.2.5 NMAC - N, 05/30/2008]

**7.37.2.6 OBJECTIVE:** This rule is intended to establish standards for the application and issuance of certificates for cigar bar status under the Dee Johnson Clean Indoor Air Act.

[7.37.2.6 NMAC - N, 05/30/2008]

**7.37.2.7 DEFINITIONS:** Unless otherwise defined below, terms used in these rules have the same meanings as set forth in the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq.:

**A. "Applicant"** means an establishment or agent of an establishment that has applied for a certificate from the department and whose application has not yet been granted or denied; "applicant" includes an applicant for the renewal of a certificate.

**B. "Application"** means an establishment's application to the department for a certificate, and includes any supporting materials; "application" includes both an application for initial certification and an application for renewal certification.

**C. "Application review period"** means the time period allotted under these rules for the department to determine whether to grant or deny an application.

**D. "Bar"** means an establishment that is devoted to the selling or serving of alcoholic beverages for consumption by patrons on the premises, in which the serving of food in the establishment is only incidental to the consumption of those beverages.

**E. "Certificate"** means a document issued by the department certifying that an establishment's application to the department for cigar bar status under the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq., has been approved by the department.

**F. "Certificated establishment"** means an establishment that has applied for and been granted a certificate from the department, whose certificate has not expired or become otherwise invalid under these rules.

**G. "Cigar"** means a roll of tobacco that is wrapped in a substance con-

taining tobacco, and that is intended for smoking, and does not include cigarettes.

**H. "Cigar bar"** means an establishment that:

(1) is a bar;

(2) is engaged in the business of selling cigars for consumption by patrons on the premises;

(3) generated at least ten percent of its total annual sales in the year 2007 from the sale of cigars, not including sales from vending machines; and

(4) generates ten percent or more of its total annual gross revenue or at least ten thousand dollars (\$10,000) in annual sales from the sale of cigars, not including sales from vending machines.

**I. "Cigarette"** means:

(1) any roll of tobacco or any substitute for tobacco wrapped in paper or in any substance not containing tobacco; or

(2) a bidi or kretek.

**J. "Department"** means the New Mexico department of health.

**K. "Establishment"** means a business enterprise that encompasses a single, contiguous physical location.

**L. "Secretary"** means the secretary of the New Mexico department of health.

**M. "Smoking"** means inhaling, exhaling, burning, carrying or holding any lighted or heated tobacco product, including all types of cigarettes, cigars and pipes and any other lighted or heated tobacco product.

[7.37.2.7 NMAC - N, 05/30/2008]

**7.37.2.8 CERTIFICATE APPLICATION:**

**A.** All applications for a certificate under these rules shall be made on the forms prescribed by the department. Forms may be obtained from the public health division of the department.

**B.** An applicant shall submit sales receipts and invoices for the previous twelve (12) months in support of its application.

**C.** An applicant shall submit to the department, together with its application, an application fee of three hundred dollars (\$300.00). A certificate shall not be issued to an establishment that has failed to submit an applicable fee.

**D.** All applications shall be submitted to the department via certified U.S. mail.

**E.** The department shall review the application, and shall determine whether to grant or deny the application within forty-five (45) days from the date that the application was received by the department. If the department determines to grant a certificate to an establishment, it

shall mail the certificate via certified U.S. mail to the mailing address identified in the establishment's application.

**F.** Notwithstanding the foregoing, in the event that the department deems an application or its supporting documentation to be insufficient to evidence that the establishment meets the definition of cigar bar, the department may either deny the application or request additional information or documentation from the establishment. Upon the department's rendering of a request for additional information or documentation, the department's forty-five day application review period shall be tolled and shall not resume until the department receives additional materials in response to its request. Upon the department's receipt of any additional materials submitted in support of the application (whether or not those materials were requested by the department), twenty (20) days shall be added to the application review period.

**G.** A certificated establishment applying for renewal of its certificate shall submit a renewal application to the department, complete with all required documentation and applicable fees, within twelve (12) months of the issuance of the establishment's previous certificate.

**H.** A certificate shall not authorize a certificated establishment to violate any portion of the Dee Johnson Clean Indoor Air Act, NMSA 1978, section 24-16-1 et seq., nor shall a certificate authorize any certificated establishment to operate in violation of a county or municipal ordinance that is more stringent than that Act.

[7.37.2.8 NMAC - N, 05/30/2008]

**7.37.2.9 VALIDITY OF CERTIFICATE:**

**A.** A certificate shall remain valid for twelve (12) months, except as otherwise provided by these rules. The department shall identify on the face of each certificate the date of the certificate's expiration.

**B.** A certificated establishment that ceases to be a bar shall have its certificate automatically rendered invalid.

[7.37.2.9 NMAC - N, 05/30/2008]

**7.37.2.10 EFFECT OF NON-CERTIFICATION, EXPIRATION OR INVALIDATION:**

**A.** An establishment that does not hold a valid certificate from the department may not operate under the cigar bar exemption of the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq., and may be subject to penalties provided under that Act for its violation.

**B.** An establishment whose certificate has expired or otherwise

become invalid shall (upon the certificate's expiration date or upon the occurrence of the event that results in invalidation) immediately return the certificate to the department via certified U.S. mail; the establishment may not operate under the cigar bar exemption of the Dee Johnson Clean Indoor Air Act, NMSA 1978, Section 24-16-1 et seq., until the establishment applies for and receives a new certificate from the department.

[7.37.2.10 NMAC - N, 05/30/2008]

**7.37.2.11 DISCLOSURE OF CHANGE OF NAME OF ESTABLISHMENT OR OWNERSHIP:** An applicant or certificated establishment that changes its name shall submit written notification to the department within thirty (30) days of said change. An applicant or certificated establishment that violates this rule shall have its certificate automatically rendered invalid.

[7.37.2.11 NMAC - N, 05/30/2008]

**7.37.2.12 NONTRANSFERABILITY OF CERTIFICATES:** A certificate shall not be transferred to another establishment. This rule shall apply regardless of whether the other establishment shares the same or a common owner or owners. A certificate conveyed to another establishment in violation of this section shall be automatically rendered invalid.

[7.37.2.12 NMAC - N, 05/30/2008]

**7.37.2.13 DISPLAY OF CERTIFICATE:** A certificate shall be prominently displayed within the premises of the certificated establishment so that it is in full public view at all times.

[7.37.2.13 NMAC - N, 05/30/2008]

**7.37.2.14 ENFORCEMENT OF THE DEE JOHNSON CLEAN INDOOR AIR ACT:**

**A.** Pursuant to NMSA 1978, Section 24-16-16, enforcement of any violation of the Dee Johnson Clean Indoor Air Act shall be conducted by the local fire, police or sheriff's department having appropriate jurisdiction over the location where a violation occurs.

**B.** Persons may register complaints regarding an alleged violation of the Dee Johnson Clean Indoor Air Act with either the department or the local fire, police or sheriff's department. Upon receiving a complaint, the department shall refer the matter to a local fire, police or sheriff's department having appropriate jurisdiction for enforcement.

[7.37.2.14 NMAC - N, 05/30/2008]

**HISTORY OF 7.37.2 NMAC:**

[RESERVED]

**Pre NMAC History:** none.

**History of Repealed Material:**  
[RESERVED]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.2 NMAC, Sections 1, 2, 6, 7, 8, 10 through 15, effective May 30, 2008.

**5.7.2.1 ISSUING AGENCY:**  
[~~State of New Mexico Commission on Higher Education~~] New Mexico Higher Education Department (NMHED)  
[7/15/98, 5.7.2.1 NMAC - Rn & A, 5 NMAC 7.2.1, 6/29/01; A, 5/30/08]

**5.7.2.2 SCOPE:** Provisions of 5.7.2 NMAC apply to New Mexico residents that are selected to participate in one of the loan-for-service programs described in this rule. Participants must be pursuing a certification/license in [~~a health field~~] an eligible health profession.  
[7/15/98, 5.7.2.2 NMAC - Rn, 5 NMAC 7.2.2, 6/29/01; A, 5/30/08]

**5.7.2.6 OBJECTIVE AND PURPOSE:** The objective and purpose of the New Mexico Health Professions Student Loan-for-Service acts are to increase the number of health professionals in areas of the state which have experienced shortages of health practitioners, by making educational loans to students seeking certification/licensure in an eligible health [~~field~~] profession. The acts require, as a condition of each loan, that the student declare his/her intent to practice as a health professional within one of the areas of the state designated by the health profession advisory committee, of the [~~Commission on Higher Education~~] New Mexico higher education department, as a health professional shortage area.

[7/15/98, 5.7.2.6 NMAC - Rn, 5 NMAC 7.2.6, 6/29/01; A, 5/30/08]

**5.7.2.7 DEFINITIONS:**  
**A.** “[~~Commission~~] Department” means the New Mexico [~~Commission on Higher Education~~] higher education department.

**B.** “Committee” means the health professions advisory committee of the [~~Commission~~] department.

[~~H~~] **C.** “Designated shortage area” means an area in New Mexico determined by the committee as not being adequately served by eligible health professionals.

[~~E~~] **D.** “Eligible health profession” means:

(1) for the Allied Health Student Loan-for-Service Act, dental hygienist, physical therapy, occupational therapy, speech-language pathology, audiology, pharmacy, nutrition, respiratory care, laboratory technology, radiologic technology, mental health services, emergency medical services, or a licensed or certified health profession as defined by the [~~Commission~~] department;

(2) for the Medical Student Loan-for-Service Act: physicians and physician assistants;

(3) for the Nursing Student Loan-for-Service Act: nurses; and,

(4) for the Osteopathic Medical Student Loan-for-Service Act; osteopathic medical doctors and osteopathic physician assistants.

[~~G~~] **E.** “Eligible institution” means:

(1) for the Allied Health Student Loan-for-Service Act: an accredited public postsecondary educational institution which provides an eligible allied health program; preference in awarding Allied Health Student Loan-for-Service Act funds shall be to students accepted for enrollment at a New Mexico public postsecondary educational institution;

(2) for the Medical Student Loan-for-Service Act: an accredited public school of medicine in the United States. Preference in awarding Medical Student Loan-for-Service Act funds shall be to students accepted for enrollment at the UNM school of medicine;

(3) for the Nursing Student Loan-for-Service Act: an accredited New Mexico public postsecondary educational institution which provides a program of nursing; and,

(4) for the Osteopathic Medical Student Loan-for-Service Act: an accredited public program of osteopathic education in the United States.

[~~F~~] **F.** “Extenuating circumstances” means circumstances not within the control of the recipient.

[~~D~~] **G.** “Loan” means a grant of funds to defray the costs incidental to an eligible health profession education, under a contract between the [~~Commission~~] department and a student, requiring repayment with services or repayment of principal and interest and any fees.

[~~E~~] **H.** “Student” means a student who is a resident of New Mexico and is enrolled at least half-time in, or has been accepted by an accredited program for one of the eligible health professions, and will be enrolled at least half-time.

[~~F~~] **I.** “Service” means full-time, on-site practice in an eligible health profession; unless otherwise provided for by the committee;



[7/15/98, 5.7.2.7 NMAC - Rn, 5 NMAC 7.2.7, 6/29/01; A, 5/30/08]

**5.7.2.8 HEALTH PROFESSION ADVISORY COMMITTEE.** The health profession advisory committee is created to advise the [Commission] department on matters relating to the administration of the health professions student loan-for-service Acts.

A. The committee shall be appointed by the [commission] department pursuant to policies and procedures of the [commission] department and shall be composed of:

- (1) a representative of the department of health;
- (2) a representative of the New Mexico health policy commission;
- (3) representatives of public post-secondary health and medical training programs;
- (4) representatives of recruiting and placement organizations;
- (5) representatives of professional health and medical associations; and
- (6) other representatives as appointed by the [commission] department.

B. The responsibilities of the committee shall include:

- (1) designate health professional shortage areas of the state;
- (2) make recommendations to the [commission] department on applicants for allied health, medical, osteopathic, and nursing, [and allied health] loan-for-service acts; and,
- (3) give advice or other assistance to the [Commission] department as requested.

[7/15/98, 5.7.2.8 NMAC - Rn, 5 NMAC 7.2.8, 6/29/01; A, 5/30/08]

**5.7.2.10 SELECTION OF LOAN RECIPIENTS.** Selection shall be based on the following considerations and preferences:

A. the ability, character, and qualifications of each applicant; this is to include a review of the applicant's educational transcripts, letters of recommendation, and references;

B. the demonstrated interest of the applicant in serving in a designated shortage area of the state;

C. the applicant's lack of resources to pay for his/her education expenses, as determined by a standardized needs analysis system, and shall be the basis for preference among otherwise eligible students;

D. a designated shortage area endorsement of the applicant;

E. a designated shortage area funding match of the applicant; and,

F. [applicants] an appli-

cant seeking to obtain a certificate, license, or degree, in a New Mexico certified/accredited program outlined in Subsection C in 5.7.2.7 NMAC, which requires two (2) years or more of study for completion.

[7/15/98, 5.7.2.10 NMAC - Rn, 5 NMAC 7.2.10, 6/29/01; A, 5/30/08]

**5.7.2.11 RESPONSIBILITIES OF THE [COMMISSION] DEPARTMENT:**

A. develop program guidelines;

B. advertise the program;

C. process applications,

~~[and]~~ D. presenting a list of eligible candidates to the committee;

~~[D.]~~ E. and administer the loans, including:

(1) disbursing funds;

(2) keeping records on borrowers and processing of contracts;

(3) administration of and record keeping on loan repayments;

(4) record keeping on location and time of service of those student loan recipients who have completed their education and are providing health service in designated shortage area in New Mexico;

(5) verification of qualification for forgiveness for service as defined in Section 5.7.2.13 NMAC;

(6) preparing the following information for each of the loan-for-service acts:

- (a) number of loans granted;
- (b) names and addresses of borrowers;

(c) names of accredited programs attended; and,

(d) names and locations of practice of those who have completed their education and have become licensed/certified health practitioners in New Mexico.

[7/15/98, 5.7.2.11 NMAC - Rn, 5 NMAC 7.2.11, 6/29/01; A, 5/30/08]

**5.7.2.12 LOANS.** Loans can be made to students to defray expenses incurred in obtaining an eligible health profession education under the following conditions and limitations.

A. The amount is dependent upon the relative need of each student, but may not exceed ~~[twelve thousand dollars (\$12,000)]~~ twenty-five thousand (\$25,000) per year. The [Commission] department may set lower maximum award amounts based on the level of degree being obtained and other considerations. The exact amount of the loan for which the applicant is eligible will be determined as a result of an analysis of the financial situation of each applicant using a standard needs analysis carried out by the financial

aid office of the student's institution.

B. Upon approval of the loan, a contract shall be drawn between the student and the [commission] department and signed by the student (for additional contract details see Section ~~[5.7.2.15 NMAC]~~ 5.7.2.14 NMAC).

[7/15/98, 5.7.2.12 NMAC - Rn, 5 NMAC 7.2.12, 6/29/01; A, 5/30/08]

**5.7.2.13 LOAN REPAYMENT AND FORGIVENESS.** All loans shall be repaid to the state together with interest or forgiven according to the following:

A. If a loan recipient of the Allied Health, Nursing, Medical, or Osteopathic Student Loan-for-Service Acts completes his/her professional education and does not serve in a designated shortage area for a period of at least one year, the [Commission] department shall assess a penalty of up to three (3) times the principal due, plus eighteen percent (18%) interest, unless the [Commission] department finds acceptable extenuating circumstances for why the student cannot serve and comply with the forgiveness provisions outlined in this section.

(1) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorata basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

(2) If the [commission] department does not find acceptable extenuating circumstances for the student's failure to carry out his/her declared intent to serve in a designated shortage area in the state, the [commission] department shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

(3) In all other cases, loans will bear interest at seven percent (7%) per year.

~~[B. If a loan recipient of the Nursing Student Loan for Service Act completes his/her nursing education and does not serve in a designated shortage area for a period of at least one year, the commission shall assess a penalty of up to three (3) times the principal due, plus eighteen percent (18%) interest, unless the commission finds acceptable extenuating circumstances for why the student cannot serve and comply with the forgiveness provisions outlined in this Section.~~

(1) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorata basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

~~(2) In all other cases, loans will bear interest at seven percent (7%) per year.]~~

~~[C.] B.~~ Loans made to students who fail to complete their eligible health profession education shall come due together with interest immediately upon termination of their education. The ~~[commission]~~ department, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

~~[D.] C.~~ The contract shall further provide that immediately upon completion or termination of the student's eligible health profession education, all interest then accrued due shall be capitalized.

~~[E.] D.~~ If the borrower, after completion of their eligible health profession education and any period of internship and/or residency, serves in one of the designated shortage areas of the state, loan principal and interest may be forgiven according to the following formula:

(1) loan terms of one (1) academic year or less shall require one (1) year of practice in a designated shortage area; upon completion of service, one hundred percent (100%) of the principal plus accrued interest shall be forgiven;

(2) loan terms of two (2) academic years shall require one (1) year of practice in a designated shortage area for each academic year of the loan; upon completion of the first year of service, fifty percent (50%) of the principal plus accrued interest shall be forgiven; upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and,

(3) for loan terms of three (3) academic years or more, forty percent (40%) of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated shortage area, thirty percent (30%) of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

~~[F.] E.~~ Recipients must serve a complete year of service in order to receive credit for that year. The minimum credit for a year of service shall be established by the ~~[commission]~~ department.

~~[G.] F.~~ Subject to applicable statutory limitations, the ~~[commission]~~ department may extend or modify the foregoing repayment periods for good cause.

~~[H.] G.~~ In the event it becomes necessary, the ~~[commission]~~ department may suspend loan payments using the following forbearance provisions:

(1) If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance to allow for any of the

following:

(a) a short period during which no payments are made, interest would continue to accrue;

(b) an extension of time for making payments, interest would continue to accrue; or

(c) a period during which the borrower makes smaller payments than were originally scheduled, interest would continue to accrue on the unpaid principal.

(2) Forbearance following completion of program, internship, or residency will not be granted for periods extending beyond six (6) months. The granting of a subsequent forbearance must be approved by the designated staff representative of the ~~[Commission]~~ department.

(3) The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower, and other information as requested.

(4) Deferral of repayment obligation may be as follows, at the determination of the ~~[commission]~~ department:

(a) the borrower is serving up to a maximum of three (3) years as an active duty member of the armed forces of the United States;

(b) the borrower is temporarily totally disabled, for a period not to exceed three (3) years, as established by sworn affidavit of a qualified physician;

(c) the borrower is seeking but unable to find full-time employment for a single period not to exceed twelve (12) months;

(d) the borrower is unable to secure employment for a period not to exceed twelve (12) months while caring for a disabled spouse;

(e) the borrower is unable to satisfy the terms of the repayment schedule while seeking but unable to find full-time employment in an eligible health profession, in a designated shortage area, for a single period not to exceed twenty-seven (27) months; or

(f) other extenuating circumstances as provided for under the American Family Leave Act.

~~[I.] H.~~ Loans may be prepaid at any time, subject to the penalty provision set forth in this Section. Payment on a loan not in repayment may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

~~[J.] I.~~ Authorized charges and fees:

(1) Late charges: Borrower may be charged a late charge in the amount of

five percent (5%) of the installment payment or five dollars (\$5.00), whichever is less, on any payment made later than ten (10) days after it is due.

(2) Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

~~[K.] J.~~ Borrower has the responsibility to notify the ~~[commission]~~ department in advance of any change of address and of any action which necessitates reconsideration of a promissory note (the failure to serve in a designated shortage area, the termination of service in a designated shortage area, or his/her ceasing to be enrolled in an eligible institution in an eligible health profession program. Borrower's failure to notify the ~~[commission]~~ department and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[7/15/98, 5.7.2.13 NMAC - Rn & A, 5 NMAC 7.2.13, 6/29/01; A, 5/30/08]

**5.7.2.14 CONTRACTS.** A contract shall be drawn between each student receiving a loan and the ~~[commission]~~ department on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the ~~[commission]~~ department of a specified sum as determined in Section 5.7.2.13 NMAC;

B. state that the borrower shall select from the list of designated shortage areas at the time he/she is ready to begin service;

C. state that immediately upon completion or termination of the student's eligible health profession education, all interest then accrued shall be capitalized;

D. state the conditions of repayment or forgiveness as detailed in Section 5.7.2.13 NMAC;

E. state that the loan shall bear interest at the designated rate per annum from the date of disbursement until paid, make provision for conversion to a payout note as shown in Section 5.7.2.13 NMAC, and state that interest will be charged on the unpaid balance of the principal only;

F. state the legal responsibilities of the borrower and that delinquent loans shall be referred to the ~~[commission]~~ department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

G. state that the borrower's obligations of the contract with the ~~[commission]~~ department shall be binding on borrower's estate;

H. state that the ~~[commission]~~ department may cancel any contract

on thirty (30) days written notice for any reasonable and sufficient cause;

I. state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the ~~[commission]~~ department, become immediately due and payable; and

J. state that jurisdiction and venue shall be proper in Bernalillo or Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[7/15/98, 5.7.2.14 NMAC - Rn, 5 NMAC 7.2.14, 6/29/01; A, 5/30/08]

**5.7.2.15 REPORTS.** The ~~[commission]~~ department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the Health Professions Student Loan-for-Service Acts in meeting the health and medical needs of the citizens of the state.

[7/15/98, 5.7.2.15 NMAC - Rn, 5 NMAC 7.2.15, 6/29/01; A, 5/30/08]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.18 NMAC, Sections 7, 9, 10, effective May 30, 2008.

### 5.7.18.7 DEFINITIONS:

**A. "Armed forces"** means the United States army, navy, air force, marine corps or coast guard.

**B. "Department"** means state of New Mexico higher education department.

**C. "Dependent minor"** means a person determined to be financially dependent upon a parent or guardian and who has not reached the age of majority (eighteen years of age) or is not an emancipated minor. The legal residence of a dependent minor is that of their parent(s) or custodial parents; or, if both parents are dead, of their legally appointed guardian(s) or of the adult person with whom he or she lives with for more than one-half of the preceding consecutive twelve months. In the event a non-custodial parent is a legal resident of New Mexico as determined in 5.7.18.9 NMAC the dependent minor shall be accorded resident status.

**D. "Emancipated minor"** means any person sixteen years of age or older shall be regarded as an adult for the purposes of determining residency status for tuition charges, provided they:

(1) have entered into a valid marriage, whether or not such marriage was ter-

minated by dissolution; or

(2) are on active duty with any of the armed forces of the United States of America; or

(3) are willingly living separate and apart from their parents, guardian or custodian, are managing their own financial affairs and the court finds it in the minors best interest to grant a declaration of emancipation pursuant to Section 32A-21-7 NMSA 1978. Mere absence from parental residence does not prove emancipation.

**E. "Enrollment"** means the first day of the term or semester for the student.

**F. "Financially dependent"** means that dependency will be determined according to Section 152 of the 1954 Internal Revenue Code. This includes any person for whom the parent, guardian, or spouse provides at least one-half of their support.

**G. "General fees"** means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

**H. "New Mexico resident for tuition purposes"** ~~[means a person who has satisfied the requirements and regulations of 5.7.18.9 NMAC.]~~ means a person who is a United States citizen or has established permanent residence in the United States and has satisfied the requirement(s) and regulations of 5.7.18.9 NMAC.

**I. "Nonresident"** means a student who enters and remains in this state principally to enroll in postsecondary education, is presumed to continue to reside outside this state, and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence.

~~[J. "Permanent residence"~~ means a place in which habitation is fixed, and to which, whenever absent, there is intention to return. Further, a person does not gain or lose residence solely while a student at an institution of postsecondary education.]

~~[K.]~~ **J. "Tuition"** means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

~~[L.]~~ **K. "Tuition reciprocity participants"** mean any nonresident, undergraduate student participating in a tuition reciprocity agreement. Pursuant to Section 21-1-6 NMSA 1978, these partici-

pants are ineligible for residency. Furthermore, students may not begin to establish residency (i.e., 12-month durational requirement) until discontinuing from such a program. Refer to department negotiated reciprocity agreements for additional detail.

[5.7.18.7 NMAC - Rp, 5.7.18.7 NMAC, 8/30/2007; A, 5/30/2008]

**5.7.18.9 REQUIREMENTS TO ESTABLISH NEW MEXICO RESIDENCY:** To become a ~~[legal]~~ resident of New Mexico for tuition purposes each of the following requirements must be satisfied.

**A. Twelve month durational requirement.** A person must physically reside in New Mexico for the twelve consecutive months immediately preceding the term for which the resident classification is requested.

**B. Financial independence requirement.** Only persons who are financially independent may establish residency apart from parents or guardians. A student cannot be approved for residency who is financially dependent upon his or her parents or legal guardians who are nonresidents of New Mexico. Dependency will be determined according to the 1954 Internal Revenue Service Code, Section 152 and is always based on the previous tax year for residency purposes. If under the age of 23 at the time the student applies for residency, a copy of his/her parents' or guardians' 1040 or 1040A U.S. income tax form for the previous tax year is required. If the student is shown to be a dependent on this tax form, he/she will not be considered financially independent or eligible for residency during the current year.

**C. Written declaration of intent requirement.** The student or person must sign a written declaration of intent to relinquish residency in any other state and to establish it in New Mexico.

**D. Overt acts requirement.**

(1) Overt acts are required to evidence support of the written declaration of intent to establish permanent residency in New Mexico. Any act considered inconsistent with being a New Mexico resident, such as having a valid driver's license from another state, will cause the request for resident classification to be denied. The required overt acts are evidence of any two of the following:

(a) if the applicant is financially dependent, a copy of the parent or guardians' previous year income tax showing the applicant as a dependent and the parent address as New Mexico; or

(b) a New Mexico high school transcript issued in the past year confirming

attendance at a New Mexico public or private high school within the past twelve (12) months; or

(c) a transcript from an online high school showing a New Mexico address confirming attendance within the past twelve (12) months; or

(d) a New Mexico driver's license or ID card with an original date of issue or a renewal date issued prior to the first day of the term or semester; or

(e) proof of payment of New Mexico state income tax for the previous year; or

(f) evidence of employment within the state of New Mexico; or

(g) New Mexico vehicle registration; or

(h) voter registration in New Mexico; or

(i) proof of residential property ownership in New Mexico; or

(j) a rental agreement within New Mexico; or

(k) utility bills showing the applicant name and a New Mexico address; or

(l) other evidence which would reasonably support the individual's intent to establish and maintain New Mexico residency.

(2) The department recognizes that there may be circumstances in which a student would not be able to fulfill the requirements of an overt act as listed in this section, such as: 1) individual is physically disabled and does not have a driver's license, or 2) individual is a convicted felon and therefore cannot vote, etc. In instances such as these, the institution will afford the student an opportunity to provide other documentary evidence or reasonable explanation which demonstrates that permanent residency in New Mexico has been established by the student.

**E. Exceptions to the twelve (12) month requirement.** If a student has met the requirements of one of the following exceptions, and is granted residency status, the student shall continue to be classified and reported as a resident for subsequent, continuing enrollment.

(1) An individual married to a legal resident of New Mexico and providing appropriate evidence shall not be required to complete the 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(2) Any person, their spouse and dependents who move to New Mexico or who now live in New Mexico and who provide appropriate evidence that they work in a permanent full-time position or practice a profession or conduct a business full-time in New Mexico, shall not be required to complete the 12-month durational requirement but must satisfy all other requirements list-

ed in Subsections B, C, and D of 5.7.18.9 NMAC.

(3) Any person entering the active service of the United States while a resident of New Mexico and who enters a state institution of postsecondary education in New Mexico after separation from such service may be classified as having been a legal resident in New Mexico during the time spent in the service provided they:

(a) have not while in the service done anything (such as voting in another state) to show abandonment of their New Mexico residency;

(b) have not established residence in some other state subsequent to being separated from service;

(c) return to New Mexico within one year after separation from service with the intention of maintaining this state as their legal residence;

(d) are not a dependent minor with parent(s) or guardian(s) whose place of residence classifies him or her as a nonresident of New Mexico.

(4) Any person [~~who is at least 65 years of age~~], their spouse and dependents, who move to New Mexico for retirement purposes, [~~or~~ and] and who provide appropriate evidence of retirement shall not be required to complete the 12-month durational requirement. They must, however, satisfy the other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

[5.7.18.9 NMAC - Rp, 5.7.18.11 & 12 NMAC, 8/30/2007; A, 5/30/2008]

**5.7.18.10 WAIVERS:** If a student has met the requirement of one of the following waivers, the student shall continue to be considered a non-resident for reporting purposes but will receive the benefit of the in-state tuition rates. In receiving such a waiver, the student does not become eligible for state funded student financial aid, unless the regulations for a particular aid program allow for such eligibility.

**A. American Indian nations, tribes and pueblos.** All out of state members of an American Indian nation, tribe and pueblo, located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution shall be eligible to pay the in-state tuition rate. These include members of the following tribes or pueblos: Navajo Nation, Jicarilla Apache, Mescalero Apache, Taos pueblo, Picuris pueblo, Ohkay Owingeh, Santa Clara pueblo, Nambe pueblo, San Ildefonso pueblo, Pojoaque pueblo, Tesuque pueblo, Cochiti pueblo, Jemez pueblo, Santo Domingo pueblo, San Felipe pueblo, Zia pueblo, Santa Ana pueblo, Sandia pueblo, Isleta pueblo, Laguna pueblo, Acoma pueblo, Zuni pueblo, and the Ute Mountain tribe.

~~[B. Navajo nation. All out of state members of the Navajo nation who reside on the Navajo reservation, as certified by the Navajo department of higher education, will be assessed in-state tuition rates.]~~

~~[C.]~~ **B. Armed forces.** Any person, their spouse or dependent child, not otherwise entitled to claim residence, who is a member of the armed forces of the United States or armed forces of a foreign country assigned to active duty in the state of New Mexico, will be assessed in-state tuition rates.

(1) Assignment to active duty within New Mexico must be certified by the military person's commanding officer upon the student's initial enrollment. Such students may continue paying resident rates for as long as they attend consecutive semesters at the same institution.

(2) Pursuant to Section 21-1-4.5 NMSA 1978, a spouse or child of an active member of the armed forces who dies or is killed becomes a resident of New Mexico within sixty (60) days of the date of death.

(3) Pursuant to Section 21-1-4.5 NMSA 1978, if an active member of the armed forces is stationed outside New Mexico following assignment to duty in New Mexico, and the member's spouse or child established residence in New Mexico and registers a letter of intent to establish and continue residing in New Mexico, the spouse or child shall be assessed in-state tuition rates.

~~[D.]~~ **C. National guard.** Pursuant to Section 20-4-14, NMSA 1978, an active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning.

~~[E.]~~ **D. Part-time students.** During regular academic year semesters, nonresident tuition may be waived, according to the institution's tuition policy, for students (U.S. citizens and foreign nationals) enrolling for no more than six semester hours during a regular term.

~~[F.]~~ **E. Summer session.** During summer sessions, nonresident tuition may be waived according to the institution's tuition policy.

~~[G.]~~ **E. Certain Texas residents.** Pursuant to Section 21-1-3D, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution, as defined in Article 12, Section 11 of the constitution of New Mexico (specifically, NMHU, ENMU, NMSU, or WNMU), may determine that any Texas resident who resides within a (one hundred thirty-five) 135 mile radius of that institution may qualify for in-state tuition rates.

~~[H-]~~ **C. Colorado and Arizona reciprocity.** Tuition reciprocity participants from Colorado and Arizona shall be selected by eligible institutions to pay in-state tuition rates based on criteria set by forth by each eligible institution. The department will notify each eligible institution of the maximum waivers allocated on an annual basis.

~~[H-]~~ **H. Athletic scholarship recipients.** Pursuant to Section 21-1-3E, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, any student (U.S. citizens and foreign nationals) receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the Constitution of New Mexico (specifically, UNM, NMSU, NMHU, ENMU, ~~[or]~~ WNMU, or NNMC) may qualify for in-state tuition rates.

~~[H-]~~ **I. Competitive scholarship recipients.** Any student participating in this program shall be recognized as a competitive scholar and reported as such, unless the student petitions for and is granted residency status.

~~[H-]~~ **J. Graduate assistants,** including research and teaching assistants, employed at least one-fourth time (10 hours weekly), will be assessed in-state tuition rates. To be eligible, students (U.S. citizens and foreign nationals) must be enrolled full-time, as defined in the graduate catalogue of the public postsecondary institution, during regular terms.

~~[H-]~~ **K. ~~[SB~~ 582.] Nondiscrimination principle.** Any tuition or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a general educational development certificate in New Mexico. State-funded financial aid programs with an employment component may require U.S. citizenship or eligible non-citizen status.

[5.7.18.10 NMAC - Rp, 5.7.18.12 NMAC, 8/30/2007; A, 5/30/2008]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.20 NMAC, Sections 1, 6 through 12, effective May 30, 2008.

**5.7.20.1 ISSUING AGENCY:**  
~~[State of]~~ New Mexico Higher Education Department (NMHED)

[5/31/97; 5.7.20.1 NMAC - Rn & A, 5 NMAC 7.20.1, 8/14/2000, A, 11/15/2007; A, 5/30/2008]

### 5.7.20.6 OBJECTIVE:

A. The objective of 5.7.20 NMAC is to provide a level of financial support to New Mexico students who have graduated from a New Mexico high school or who have obtained a New Mexico ~~[GED]~~ general educational development (GED) diploma and are enrolled full-time at an eligible New Mexico public college or university. This level of financial support is intended to help defray the cost of tuition at the public postsecondary institution where the student is enrolled. Scholarships are not awarded on the basis of financial need; therefore, no student can be required to complete the free application for federal student aid (FAFSA).

B. A further purpose of 5.7.20 NMAC is to encourage New Mexico high school students to pursue a ~~[public college]~~ postsecondary education in New Mexico to complete a first four-year degree within a maximum of nine (9) semesters or a first two-year degree within a maximum of five (5) semesters (the number of semesters is so determined as the initial award is not made until the second semester of college enrollment).

C. As it applies to students with disabilities who may require special accommodations, the department, in consultation with the student and the office at the postsecondary institution that serves students with disabilities, shall review both the definition of "full time" and the maximum number of consecutive semesters of eligibility and adjust either or both as deemed reasonable and appropriate, based on the student's disability needs. In no case shall "full time" mean fewer than six (6) credit hours per semester and in no case shall eligibility extend beyond fourteen (14) consecutive semesters.

[5/31/97, 9/30/98; 5.7.20.6 NMAC - Rn, 5 NMAC 7.20.6, 8/14/2000; A, 6/29/2001; A, 5/30/2008]

### 5.7.20.7 DEFINITIONS:

~~[E-]~~ **A. "Academic year"** means any consecutive period of two semesters (or three semesters for accelerated programs), three quarters or other comparable units commencing with the fall term each year.

B. **"Accelerated program"** means one in which a summer semester is a program requirement and not a student choice; a cohort that requires sequence of courses taken in summer semester.

~~[D-]~~ **C. "Award recipient"** means a student awarded a legislative lot-

tery scholarship.

~~[A-]~~ **D. "Department"** means the New Mexico higher education department.

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

~~[H-]~~ **F. "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 legislative lottery scholarship program shall exclude them.

**G. "GPA"** means grade point average.

~~[G-]~~ **H. "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 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;

(4) in the event that the student has not received a diploma as described in Paragraphs (1) through (3) of Subsection [G] H of 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.

[B-] I. **“Legislative lottery scholarship”** means a scholarship awarded from proceeds of the New Mexico lottery tuition fund, to defray all or part of the cost of tuition.

J. **“Non-enrollment”** means a student is not enrolled in a postsecondary institution.

K. **“Post-secondary institution”** refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, and four-year educational institution.

[F-] L. **“Probation”** means [F-] (1) any period of time of enrollment that students, [which] who 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 of 5.7.20.9 NMAC less the regular semester(s) of probation].

[F-] M. **“Satisfactory academic progress”** means, for continuing eligibility following establishment of first year eligibility, maintenance of a cumulative [grade point average] GPA 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] semester).

N. **“Summer semester”** means a semester equal to fall and spring semester in duration and intensity that is required as part of an accelerated program. [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, 6/30/2003; A, 11/15/2007; A, 5/30/2008]

## 5.7.20.8 STUDENT ELIGIBILITY:

A. **First year eligibility.** [To be eligible, a student must meet the requirements which follow. Upon satisfaction of the first year eligibility requirements, the scholarship will be awarded to the student beginning with their second

~~semester of enrollment.~~] A scholarship may be awarded to a New Mexico resident who:

(1) has established New Mexico residency as defined in 5.7.18.9 NMAC or is eligible for a [Navajo nation waiver as defined in Subsection B of 5.7.18.10 NMAC or an SB 582] nondiscrimination waiver as defined in Subsection [F-] K of 5.7.18.10 NMAC, provided a student has received a graduate equivalent diploma as defined in Subsection [G] H of 5.7.20.7 NMAC;

(2) has a graduate equivalent diploma;

(3) has met the admission requirements and is accepted for enrollment as an undergraduate student at an eligible institution;

(4) has obtained at least a 2.5GPA during their first college semester;

(5) has been enrolled full-time in a certificate or [degree seeking] degree program at a New Mexico postsecondary institution during the first regular semester immediately following the students' receipt of a graduate equivalent diploma as defined in Subsection [G] H of 5.7.20.7 NMAC.

(a) Mid-year high school graduates. Students in receipt of a graduate equivalent diploma which is dated after the eligible institution's admissions deadline for degree status in the first regular semester shall be permitted to enroll and establish eligibility in the next immediate regular semester (excluding summer [session] semester).

(b) Active duty military. Students who, within one hundred twenty (120) days of completion of a graduate equivalent diploma, begin service in the United States armed forces can establish eligibility for the scholarship during their first college semester if within one hundred twenty (120) days of completion of honorable service or medical discharge from the service are accepted for entrance to and attend [one of the state educational institutions] a postsecondary institution. Said students are subject to the remaining provisions of 5.7.20 NMAC.

[F-] (c) **Students with documented medical condition.** Students who are incapable of meeting the requirements specified in Paragraph 5 of Subsection A of 5.7.20.8 NMAC due to a documented medical condition do not forfeit eligibility for the legislative lottery scholarship; however, the following requirements shall apply.

[F-] (i) The student shall provide documents certifying the nature of [this] his or her medical condition to the financial aid officer at the postsecondary institution at which the student is enrolling or will enroll. The financial aid officer shall exercise professional judgment to determine whether the medical condition is beyond the student's control and precludes the student from meeting the require-

ments specified in Paragraph 5 of Subsection A of 5.7.20.8 NMAC.

[F-] (ii) If, in the professional judgment of the financial aid officer, the student's documented medical condition is recognized as a valid reason for the student's inability to meet the requirements of Paragraph 5 of Section A of 5.7.20.8 NMAC the student's initial eligibility for the legislative lottery scholarship shall be suspended or tolled unless and until such time that the student is capable of meeting the requirements of Paragraph 5 of Subsection A of 5.7.20.8 NMAC.

[F-] (iii) The student with a recognized documented medical condition shall not be eligible to receive the legislative lottery scholarship until such time that all requirements of Subsection A of 5.7.20.8 NMAC have been met.

(6) has not been awarded a New Mexico scholars' scholarship or other scholarship which provides for one hundred percent of the cost of tuition; and

(7) has complied with all the rules and regulations adopted by the department for award of the legislative lottery scholarship;

(8) students with disabilities shall obtain a referral from the student services division of the postsecondary institution where he or she is enrolled that oversees students with special needs' requests to reduce the credit hours to be considered full-time for scholarship eligibility; referrals shall be received by the last census day to determine first year eligibility.

B. **Continuing eligibility.** Upon satisfaction of the first year eligibility requirements, the scholarship will be awarded to the student beginning with their second semester of enrollment. A student's continuing eligibility shall be determined on a semester basis.

(1) A legislative lottery scholarship award may be re-awarded to a student who:

(a) maintains satisfactory academic progress; a student has the right to request use of his or her cumulative grade point average earned at all New Mexico institutions; and

(b) remains enrolled for at least full time status for consecutive semesters or as provided in Subsection D of 5.7.20.9 NMAC; students accepted into accelerated programs who enroll full-time for the summer semester are eligible to receive the scholarship.

(2) Students failing to meet continuing eligibility requirements shall defer to the eligible institution for probation consideration as defined in [Subsection I of 5.7.20.7 NMAC] Subsection C of 5.7.20.8 NMAC.

(3) Students with disabilities may be re-awarded the legislative scholarship

under the following conditions:

(a) a referral is obtained for each semester in which a reduction in credit hours is requested;

(b) maintains satisfactory academic progress; and

(c) in no case shall eligibility extend beyond fourteen (14) consecutive semesters.

C. **Probation.** To be eligible for a probationary period, a student shall meet the requirements which follow:

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

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

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

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

[5/31/97, 9/30/98, 12/31/99; 5.7.20.8 NMAC - Rn & A, 5 NMAC 7.20.8, 8/14/2000; A, 11/15/2007; A, 5/30/2008]

#### 5.7.20.9 DURATION OF SCHOLARSHIP:

A. The initial scholarship shall begin with the second semester of enrollment at a postsecondary institution and continue for that academic year. Thereafter, each scholarship is for a period of one semester subject to revocation for failure to maintain eligibility. The scholarship may be renewed on a semester basis until the award recipient has received eight (8) semesters of scholarship awards, or until the student graduates with a bachelor's degree from an eligible institution, whichever is sooner.

B. An award recipient may use the award at an eligible two-year postsecondary institution until he/she receives four semesters of scholarship awards or an associate's degree and ~~[may receive four (4) semesters of additional awards if he/she transfers in the following semester to an eligible New Mexico four year institution. In no case shall a student receive more than eight semesters of awards]~~ can continue to use the award at an eligible New Mexico four-year postsecondary institution if the student transfers to a four-year postsecondary institution without a break in attendance or the semester following receipt of the associate's degree. In no case shall a student receive more than eight semesters of the award.

C. A student may transfer from a four-year postsecondary institution

to a two-year postsecondary institution but, in no case shall a student receive more than four (4) semesters of awards (including those awarded at the prior postsecondary institution) or until the student graduates with an associate's degree, whichever is sooner.

D. A student participating in cooperative education, military obligations, or other approved commitments may participate as long as the student has met the first year eligibility requirements before entering into said obligations.

(1) **Cooperative education.** Students may maintain continuing eligibility for ~~[this program]~~ the legislative lottery scholarship if the student provides sufficient documentation to the financial aid officer, with certification from the postsecondary institution's cooperative education office, that the "part-time enrollment" ~~[and/or]~~ or "non-enrollment" was due to a legitimate cooperative education placement. The financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "part-time enrollment" ~~[and/or]~~ or "non-enrollment" from the determination of remaining eligible award semesters.

(2) **Military ~~[commitments]~~ obligation.** Students may maintain continuing eligibility for this program for a period of up to one (1) year of "non-enrollment" if the student provides sufficient documentation to the financial aid officer, such as copies of authorized orders, that demonstrates the military obligation. The financial aid officer shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

(3) Other approved leave of absence for a period of up to one (1) year of "non-enrollment." Students may obtain an approved leave of absence if the student provides sufficient documentation to the financial aid officer to justify the leave of absence. The documentation may include approval for authorized leave by the postsecondary institution's academic vice president, registrar, financial aid director, or other appropriate official. The financial aid director shall, in turn, ensure that the student does not receive program awards in excess of those prescribed in Subsections A and B of 5.7.20.9 NMAC and shall exclude the semesters of "non-enrollment" from the determination of eligible award semesters.

E. Student ineligibility for other aid. If a student becomes ineligible for a different scholarship that covers tuition, but ~~[does satisfy]~~ satisfies the first

year eligibility requirements of ~~[this program]~~ the legislative lottery scholarship, the student may begin receiving the legislative lottery scholarship for the remaining number of semesters of enrollment, not to exceed those prescribed in Subsections A and B of 5.7.20.9 NMAC. For example, at a four-year postsecondary institution, if a student received a tuition scholarship that required a 3.0 GPA for two semesters and that student's GPA subsequently dropped to a 2.5, the student could begin receiving the legislative lottery scholarship for 7 semesters (9 - 2 = 7) provided they meet the continuing eligibility criteria.

[5/31/97, 9/30/98; 5.7.20.9 NMAC - Rn & A, 5 NMAC 7.20.9, 8/14/2000; A, 11/15/2007; A, 5/30/2008]

#### 5.7.20.10 AMOUNT OF SCHOLARSHIP:

The amount of the award may vary dependent upon the amount of funds received from the lottery tuition fund and the number of eligible recipients. Scholarships shall only apply to tuition costs. Department staff will, in May annually, notify all eligible postsecondary institutions of the percentage of tuition each scholarship shall provide for the following academic year.

[5/31/97, 9/30/98; 5.7.20.10 NMAC- Rn, 5 NMAC 7.20.10, 8/14/2000; A, 11/15/2007; A, 5/30/2008]

#### 5.7.20.11 ADMINISTRATION OF THE LEGISLATIVE LOTTERY SCHOLARSHIP:

A. Eligible postsecondary 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 legislative lottery 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; and

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

(3) draw-down funds from the department 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 department to include the number of awards granted, amount of funds awarded, number of awards renewed, and ethnicity and gender of students receiving the legislative lottery scholarship;

(6) publish the probation policy as defined in [~~Subsection I of 5.7.20.7 NMAC~~] Subsection C of 5.7.20.8 NMAC;

(7) [~~may~~] enter into consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, 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 legislative lottery 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 legislative lottery scholarship program; nothing in this section requires [~~as~~] a postsecondary institution to award a scholarship inconsistent with the criteria established or such scholarship; refer to Subsection E of 5.7.20.9 NMAC for additional provisions;

(9) not require any student to complete the FAFSA to determine eligibility for the legislative lottery scholarship.

B. The department shall:

(1) invest, through the state treasurer's 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 [~~staff~~] department; if, during the audit process, evidence indicates that a student should not have received a legislative lottery scholarship, the postsecondary institution will be held harmless for a semester payment, if the students file is appropriately documented; the postsecondary 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; A, 11/15/2007; A, 5/30/2008]

**5.7.20.12 TERMINATION OF SCHOLARSHIPS:** A scholarship is terminated upon noncompliance by the award recipient with the legislative lottery scholarship [~~program~~] rules, regulations or procedures as promulgated by the department.

[5/31/97, 9/30/98; 5.7.20.12 NMAC - Rn, 5 NMAC 7.20.12, 8/14/2000; A, 11/15/2007; A, 5/30/2008]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.23 NMAC, Sections 6, 7, 8, 9, 10, effective May 30, 2008.

**5.7.23.6 OBJECTIVE:** The objective of 5.7.23 NMAC is to encourage New Mexico students with financial need, who do not qualify for other state grants or scholarships, to attend and complete educational programs at a New Mexico public college or university or a tribal college. This level of financial support is intended to help defray the cost of tuition, fees, books and course supplies at the public postsecondary institution where the student is enrolled.

[5.7.23.6 NMAC - N, 12/31/2007; A, 5/30/2008]

**5.7.23.7 DEFINITIONS:**

A. **"Department"** means the New Mexico higher education department.

B. **"Grant"** means the college affordability grant.

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 college affordability grant.

E. **"Eligible institution"** means any New Mexico public post-

secondary institution or accredited tribal college.

F. **"Satisfactory academic progress"** means maintaining the required academic progress toward degree completion as determined by the institution.

G. **"Half-time"** means an enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices.

H. **"Undergraduate student"** means a student who is enrolled in a degree-seeking program and has not earned his or her first baccalaureate degree.

I. **"Returning adult"** means a student enrolling in a public postsecondary educational institution at any time later than the first semester following high school graduation or the award of a general educational development certificate.

J. **"FAFSA"** means the free application for federal student aid.

[5.7.23.7 NMAC - N, 12/31/2007; A, 5/30/2008]

### 5.7.23.8 STUDENT ELIGIBILITY:

A. First year eligibility. College affordability grants may be granted to an individual who:

(1) is a resident of New Mexico as defined in 5.7.18.9 NMAC or is eligible for the [~~SB582~~] nondiscrimination waiver as defined in Subsection [~~E~~] K, 5.7.18.10 NMAC;

(2) is enrolled at least half time as an undergraduate student at a New Mexico public college or university or tribal college;

(3) has demonstrated financial need as determined by the eligible college or university; and

(4) has completed a high school diploma or general educational development (GED) diploma.

B. Students demonstrating a financial need shall:

(1) complete the FAFSA;

(2) have unmet need after all other financial aid has been awarded; and

(3) may not be receiving any other state grants or scholarships.

C. Continuing eligibility. Grants may be renewed to an individual who:

(1) maintains satisfactory academic progress;

(2) remains enrolled for at least half-time status [~~for consecutive semesters~~]; and

(3) continues to demonstrate financial need as determined by the college or university.

[5.7.23.8 NMAC - N, 12/31/2007; A, 5/30/2008]



**5.7.23.9 AMOUNT OF GRANT:**

A. Each grant award is for a period of one year and shall not exceed \$1,000 per semester. The grant may be renewed on an annual basis ~~[until the award recipient has received eight (8) consecutive semesters of scholarship awards, ]~~ or until the student graduates with a bachelor's degree from an eligible institution [~~; whichever comes first~~].

B. Summer grants may be provided, if the amount thereof would not cause the two semester cumulative limit of \$2,000 to be exceeded.

~~[C. Summer grants are excluded from being counted toward the eight (8) consecutive semesters.]~~

~~[D.]~~ C. Transferability from institution to institution will be subject to available funding.

~~[E.]~~ D. A leave of absence may be approved by the institution if extenuating circumstances exist for a period not to exceed one (1) year.

~~[F.]~~ E. Part-time awards will be pro-rated.

(1) Grants offered to students enrolled three-quarters time may not exceed \$750 per semester.

(2) Grants offered to students enrolled half-time may not exceed \$500 per semester.

[5.7.23.9 NMAC - N, 12/31/200; A, 5/30/2008]

**5.7.23.10 ADMINISTRATION OF THE COLLEGE AFFORDABILITY GRANT:**

A. Eligible public colleges and universities shall:

(1) develop a method to notify students of their possible eligibility;

(2) designate an officer responsible for administering the program; the officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the college affordability grant under the terms of these rules and regulations;

(3) provide an annual report to the department to include the number of grants, amount of grants awarded, number of grants renewed, and ethnicity and gender of students receiving the grant;

(4) enter into consortium agreements, as defined in the code of federal regulations, 34 CFR 6685, in order to greater facilitate the enrollment of students and to facilitate the student's participation in this program.

B. The department shall:

(1) allocate money to eligible colleges and universities based on a student need formula calculated according to income reported on the FAFSA and on the percentage of the institution's students clas-

sified as returning adults who are other wise ineligible for state financial aid;

(2) invest, through the state ~~[treasurer's office]~~ investment council, the appropriated funds, while ~~[utilizing]~~ transferring 50% of the interest ~~[on the investment]~~ or at least \$2,000,000 to the college affordability scholarship fund to provide for new awards;

(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.

C. At least a random audit of each participating institution's records shall take place on at least an annual basis by members of the department staff. If, during the audit process, evidence indicates that a student should not have received a scholarship, the institution will be held harmless for a semester payment, if the student's file is appropriately documented. The institution must notify the student of termination of their award, subject to continuing eligibility requirements.

[5.7.23.10 NMAC - N, 12/31/2007; A, 5/30/2008]

## NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.31 NMAC, Section 9, effective May 30, 2008.

**5.7.31.9 LOAN REPAYMENT PROGRAM ELIGIBILITY AND AWARD CRITERIA**

A. An applicant shall be licensed to practice in New Mexico as an attorney and shall declare intent to practice as an attorney in public service employment.

B. Prior to submitting an application to the public service law loan repayment program, an applicant shall apply to all available legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies.

C. An applicant who intends to practice as an attorney in a public service employment position that earns more than forty-five thousand dollars (\$45,000) per year is not eligible for participation in the public service law loan repayment program.

D. Prior to receiving a loan repayment award, the applicant shall file with the department:

(1) a declaration of intent to practice as an attorney in public service employment;

(2) proof of prior application to

all legal education loan repayment programs offered by the applicant's law school for which the applicant qualifies; and

(3) documentation that includes the applicant's total legal education debt, salary, any amounts received by the applicant from other law loan repayment programs and other sources of income deemed by the department as appropriate for consideration; provided that the applicant shall not be required to disclose amounts of income from military service.

E. Award criteria shall provide that:

(1) preference in making awards shall be to applicants who:

(a) have graduated from the university of New Mexico law school;

(b) have the greatest financial need based on legal education indebtedness and salary;

(c) work in public service employment that has the lowest salaries; and

(d) work in public service employment in underserved areas of New Mexico that are in greatest need of attorneys practicing in public service employment;

(2) an applicant's employment as an attorney in public service employment prior to participation in the public service law loan repayment program shall not count as time spent toward the minimum three-year period of service requirement pursuant to the contract between the participating attorney and the department acting on behalf of the state;

(3) award amounts are dependant upon the applicant's total legal education debt, salary and other sources of income, other than income from military service, deemed by the department as appropriate for consideration;

(4) award amounts may be modified based upon available funding or other special circumstances;

(5) an award shall not exceed the total legal education debt of any participant; and

(6) award amounts shall be reduced by the sum of the total award amounts received by the participant from other legal education loan repayments programs.

F. The following legal education debts are not eligible for repayment pursuant to the Public Service Law Repayment Program:

(1) amounts incurred as a result of participation in state or law school loan-for-service programs or other state or law school programs whose purposes state that service be provided in exchange for financial assistance;

(2) scholarships that have a service component or obligation;

(3) personal loans from relatives or friends; and

(4) loans that exceed individual standard school expense levels;

(5) an award determination may be appealed to the secretary of higher education.

[5.7.31.9 NMAC - N, 12/31/2007; A, 5/30/2008]

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

This is an amendment to 8.262.400 NMAC, section 7, effective June 1, 2008.

**8.262.400.7 DEFINITIONS:**

A. **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or a failure to provide a service in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.

B. **Authorized representative:** An individual or entity for whom or for which the applicant has signed a release of confidentiality and to whom notices will be sent.

C. **Benefits:** SCI-covered services provided by the SCI-participating MCO and for which payment is included in the capitation rate, as defined in 8.262.600 NMAC.

D. **Capitation:** A per-member, monthly payment to an MCO that covers contracted services and is paid in advance of service delivery. It is a set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed in units of "per member per month" (PMPM).

E. **Catastrophic coverage:** Insurance coverage for specific catastrophic events, such as death, fire, flood, and some medical conditions.

F. **Category:** A designation of the automated eligibility system. The assigned category is applicable for a period of 12 consecutive months regardless of changes in income or family status, subject to change by request from the recipient.

G. **Cost-sharing:** Premiums and copayments owed by the member based on income group category.

H. **Cost-sharing maximum:** The cost sharing maximum is determined during the initial eligibility determination and recertification process. The cost sharing maximum amount established at the point of eligibility determination for the benefit year represents an amount equal to

5% of the program participant's countable income.

I. **Coverage:** Coverage month is a month where all eligibility and enrollment requirements including premium payment, if applicable, are met.

J. **Eligibility:** The process of establishing that SCI residency, citizenship or alien status, health insurance coverage, income, living arrangement, and age requirements are met, as defined in this part and 8.262.500 NMAC.

K. **Employer:** An employer with fifty or fewer eligible employees on a full or part-time basis.

L. **Employer group:** A group of employees employed by an eligible employer who ~~receive~~ receives SCI benefits through the employer.

M. **Employee:** A person employed by an employer who participates in the SCI health benefit plan.

N. **Employer enrollment period:** Employer's standard practice for new and annual health insurance enrollment.

O. **Enrollment:** The process of enrolling eligible members in an MCO for purposes of management and coordination of health care delivery. The process of enrolling members either by the employer or individually in an available SCI-participating MCO for purposes of health care coverage. Enrollment encompasses selection of an MCO, notification of the selection to the MCO, and timely payment of premiums, as required, as designed by the MCO.

P. **Eligibility letter:** A notice of SCI eligibility and the potential for SCI coverage contingent upon enrollment with a SCI participating MCO. The letter will include start and end dates of eligibility, the requirement to enroll before coverage will begin, and the need to enroll 30 days subsequent to the month of issuance of the enrollment letter. The letter will also notify the member of the federal poverty level subcategory and of the responsibility to track out-of-pocket expenditures for SCI cost sharing.

Q. **Fifth degree of relationship:** The following relatives are within the fifth degree of relationship to a dependent child:

- (1) father (biological or adopted);
- (2) mother (biological or adopted);
- (3) grandfather, great grandfather, great-great-grandfather, great-great-great-grandfather;
- (4) grandmother, great grandmother, great-great-grandmother, great-great-great-grandmother;
- (5) spouse of child's parent (step-parent);
- (6) spouse of child's grandparent,

great grandparent, great-great-grandparent, great-great-great-grandparent (step-grandparent);

(7) brother, half-brother, brother-in-law, stepbrother;

(8) sister, half-sister, sister-in-law, stepsister;

(9) uncle of the whole or half blood, uncle-in-law, great uncle, great-great uncle;

(10) aunt of the whole or half blood, aunt-in-law, great aunt, great-great aunt;

(11) first cousin and spouse of first cousin;

(12) son or daughter of first cousin (first cousin once removed) and spouse;

(13) son or daughter of great aunt or great uncle (first cousin once removed) and spouse; or

(14) nephew/niece and spouses.

(15) **Note:** A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

R. **Fiscal agent (medicaid fiscal agent):** An entity contracted by the state medicaid program to sort and process eligibility information as well as pay fee-for-service and capitation claims.

S. **Grievance (member):** Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO or its operations that is not an MCO action.

T. **Group of one:** Individuals who enroll without an employer group but report self-employment.

U. **Health insurance:** Insurance against loss by sickness or bodily injury. The generic term for any forms of insurance that ~~provide~~ provides lump sum or periodic payments in the event of bodily injury, sickness, or disease, and medical expense. This includes but is not exclusive ~~to~~ of: medicare part A or medicare part B, medicaid, CHAMPUS, and other forms of government health coverage.

V. **Hearing or administrative hearing:** An evidentiary hearing that is conducted so that evidence may be presented.

W. **Income groupings- 0-100%, 101-150%, and 151-200% of federal poverty levels:** These income groupings define the premium, copayment, and cost-sharing maximums for SCI cost-sharing purposes.

X. **Individual:** A person who enrolls in SCI who is not a member of an eligible employer group and pays the premium amount designated for both the employee share, if applicable based on income, and the employer share, or has that amount paid on his/her behalf by another entity.

~~Y.~~ **Individual health plan:** Health insurance coverage purchased by an individual from an insurer offering individual healthcare benefit policies.

~~[X.] Z.~~ **Managed care organization (MCO):** An organization licensed or authorized through an agreement among state entities to manage and coordinate and receive payment at actuarially sound payment rates for the delivery of specified services to enrolled members from a certain geographic area.

~~[Z.] AA.~~ **Member:** An eligible member enrolled in an MCO.

~~[AA.] BB.~~ **Member month:** A calendar month in which a member is enrolled in an MCO.

~~[BB.] CC.~~ **Notice:** A written statement that includes what action is being taken, the reasons for the intended action, the specific regulation that requires the action, and an explanation of the circumstances under which the service may be continued if a hearing is requested.

~~[CC.] DD.~~ **Parental or custodial relative status:** The state of having a dependent child under the age of 18 who is the son, daughter, or relative within the fifth degree of relationship living in the household and under the care and control of the individual.

~~[DD.] EE.~~ **Premium-employer:** A specific monthly payment payable to the MCO by employers who enroll their employees in SCI at a rate set by the department. This amount may be paid by an individual member not in an employer group in order to participate in SCI. Subject to available funding, the state may allocate funds to assist certain eligible individuals with payment of the employer premium contribution and will notify eligible individuals of such assistance. Premiums cannot be refunded.

~~[EE.] FF.~~ **Premium-employee:** A specific monthly payment payable to the MCO calculated by the department based on a subcategory of eligibility representing an income grouping. 062-0-100% FPL, 062-101-150% FPL, 062-151-200% FPL. Premiums and copayments cannot be refunded.

~~[FF.] GG.~~ **Qualifying event:** Termination of employment for any reason; loss of eligibility for health insurance benefits due to reduction in work hours; loss of health insurance coverage due to death, divorce or legal separation from spouse, loss of dependent status; moving to or from another state.

~~[GG.] HH.~~ **SCI (State coverage insurance):** The New Mexico health care program implemented under the authority of the health insurance flexibility and accountability (HIFA) waiver granted to the state by the centers for medicare and

medicaid services (CMS).

~~[HH.] II.~~ **Shoobox method:** The method under which an SCI member is responsible for tracking, and submission of a request for verification of total expenditures for himself, based on SCI employee premiums and copayments for purposes of establishing that the cost-sharing maximum amount has been met.

~~[H.] JJ.~~ **Voluntary drop:** The act of voluntarily terminating or discontinuing health insurance coverage.  
[8.262.400.7 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07; A, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.262.500 NMAC, section 9, effective June 1, 2008.

**8.262.500.9 ESTABLISHING NEED - GENERAL REQUIREMENTS:** Methodology for establishing financial eligibility for state coverage insurance (SCI) uses New Mexico works cash assistance definitions of income, rules for income availability, and exempt income with the exception of Subsection C of 8.102.520.11NMAC and Subsection B of 8.102.520.12 NMAC, which refer to the methodology for determining self-employment income.

A. **Income test:** In order to be eligible for SCI, countable income (after applicable exemptions and disregards) must meet the SCI income limit for the appropriate family size. The SCI income standards are based on 200% of federal poverty levels (FPLs). SCI uses New Mexico works income definitions and methodologies with the exception of Subsection C of 8.102.520.11NMAC and Subsection B of 8.102.520.12 NMAC. (Also see 8.102.520.8 NMAC through 8.102.520.15 NMAC). SCI eligibility and cost-sharing levels will be determined based on one income test using countable income (after applicable exemptions and disregards).

B. **Determining income for self-employed individuals:** Reports to state and federal tax authorities are the usual indicators of self-employment income (refer to Subparagraph (b) of Paragraph (2) of Subsection B of 8.100.130.14 NMAC for other acceptable documents that may be submitted to determine self-employment income). To determine self-employment income, apply the following methodology:

(1) use the amount listed on line 31 (net profit or loss) of Schedule C or line 36 (net profit or loss) of Schedule F of the most recent or previous year's 1040 income tax return to determine annual self-employ-

ment income:

(2) divide the amount by 12 or by the applicable number of months in business to determine monthly self-employment income.

~~[B.] C.~~ **Payment standard increments:** Payment standard increments for nonsubsidized housing living arrangements and clothing allowance do not affect the SCI eligibility process, i.e., the eligibility limits for income are not increased by the amount of the nonsubsidized housing or clothing allowance payment increments.

~~[C.] D.~~ **Excess hours work deduction:** This deduction is not applicable to SCI.

~~[D.] E.~~ **SCI category designation:** SCI eligibles will be assigned one category of eligibility (062). The income grouping (subcategory) will control the employee premium and copayment amounts.

[8.262.500.9 NMAC - N, 7-1-05; A, 3-1-06; A, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.1 NMAC, section 7, effective June 1, 2008.

**8.306.1.7 DEFINITIONS:** The state of New Mexico is committed to reducing the number of uninsured working New Mexico residents and improving the number of small employers offering health benefit plans by implementation of a basic health coverage health insurance benefit provided by contracted managed care organization with cost sharing by members, employers and the state and federal governments. This section contains the glossary for the New Mexico state coverage insurance policy. The following definitions apply to terms used in this chapter.

A. Definitions beginning with letter "A":

(1) **Abuse:** Provider practices that are inconsistent with sound fiscal, business or medical practices and result in unnecessary cost to SCI, in reimbursement for services that are not medically necessary, or in services that fail to meet professionally recognized standards for health care. Abuse also includes member or member practices that result in unnecessary costs to SCI.

(2) **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or the failure to provide services in a timely manner. An untimely service

authorization constitutes a denial and is thus considered an action.

(3) **Appeal, member:** A request from a member or provider, ~~on the member's behalf with the member's written permission, for review [of] by the managed care organization (MCO) [action] of an MCO action as defined above in Paragraph (2) of Subsection A of 8.306.1.7 NMAC. [Refers to an individual or entity appealing to a higher authority, as for a decision. An appeal is a request to change a previous decision made by the MCO. An appeal can be made to the contractor for review of a contractor action by a member or a provider on a member's behalf. An appeal may also be a request for a new hearing or a request for a transfer of a case from one court to a higher court.]~~

(4) **Appeal, provider:** A request by a provider for review by the MCO of an MCO action related to the denial of payment or an administrative denial.

(4) (5) **Approvals:** Approvals are either initial or concurrent review decisions, which yield utilization management authorizations based on the member meeting the clinical criteria for the requested SCI service(s) ~~and/or~~ or level of care.

B. Definitions beginning with letter "B":

(1) **Behavioral health planning council (BHPC):** Refers to the council created by HB 271 to meet federal advisory council requirements and to provide consistent, coordinated input to the behavioral health service delivery in New Mexico. The SE will be expected to interact with the BHPC as an advisory council.

(2) **Behavioral health:** Refers to mental health and substance abuse, including co-occurring disorders.

(3) **Behavioral health purchasing collaborative (the collaborative):** ~~Refers~~ Refer to the interagency behavioral health purchasing collaborative pursuant to the passage of HB 271 effective May 19, 2004. The collaborative is made up of 17 publicly funded statutory member agencies including 15 direct service ~~provision~~ providers and funding agencies, including the human services department.

(4) **Benefit package:** SCI covered services that must be furnished by the MCO and for which payment is included in the capitation rate.

(5) **Benefit year:** The year beginning with the month of enrollment in an MCO and payment of designated premiums if applicable and continuing for a period up to 12 continuous months as long as enrollment requirements are met.

(6) **Broker:** A person, partnership, corporation or professional corporation appointed by a health insurer licensed to transact business in New Mexico to act as its representative in any given locality for

the purpose of soliciting and writing any policy or contract insuring against loss or expense resulting from the sickness of the insured.

C. Definitions beginning with letter "C":

(1) **Capitation:** A per-member, monthly payment to an MCO that covers contracted services and is paid in advance of service delivery. It is a set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed ~~in units of~~ "per member per month" (PM/PM).

(2) **Care coordination:** ~~[Is an]~~ An office-based administrative function to assist members with multiple, complex and special cognitive, behavioral ~~and/or~~ or physical health care needs on an as needed basis. It is member-centered, family-focused when appropriate, culturally competent and strengths-based. Care coordination can help to ensure that the physical and behavioral health needs of the SCI population are identified and services are provided and coordinated with the individual member and family, if appropriate. Care coordination operates within the MCO with a dedicated care coordination staff, functioning independently, but is structurally linked to the other MCO systems, such as quality assurance, member services, and grievances. Clinical decisions shall be based on the medically necessary covered services and not on fiscal considerations. ~~The care coordinator coordinates services within the physical health delivery system, as well as with other service providing systems. The care coordinator may interface and collaborate with the member's case manager, if applicable, for those who receive case management services.~~ If both physical and behavioral health conditions exist, the primary care coordination responsibility will lie with the care provider from the condition that is most acute at the time.

(3) **Case management:** Refers to a person or team of people who provide outreach to customers, provide information to them about services, work with them to develop a service plan, assist in obtaining needed services, supports and entitlements and advocate on their behalf. General case management is designed to access, coordinate and monitor services. ~~[It is a set of functions intended to ensure that individuals receive the services they need in a timely, appropriate, effective, efficient and coordinated fashion. It is individually centered, family/member focused when appropriate, culturally competent and strengths-based. The general purposes of case management are to access, coordinate and monitor services and to assess an individual's progress toward specific goals. Services typically include assessment, plan of care/service plan, development and review, advocacy,~~

~~referral and linkage to services, housing activities, the individual's income maintenance activities, facilitation and natural helping resources and coordination of physical health and social services and outcomes.]~~

(4) **Category:** A designation of the automated eligibility system. SCI has one designated category (062) and three income groupings that are assigned to an individual based on their income grouping. The assigned category is applicable for a period of 12 consecutive months regardless of changes in income or family status, subject to change by request from the recipient.

(5) **Clean claim:** A manually or electronically submitted claim from a participating provider that contains substantially all the required data elements necessary for accurate adjudication without the need for additional information from outside the health plan's system. ~~[A clean claim may include errors originating in the state's system].~~ It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity. A clean claim is not materially deficient or improper, such as lacking substantiating documentation currently required by the health plan, or has no particular or unusual circumstances requiring special treatment that prevents payment from being made by the health plan within 30 days of the date of receipt if submitted electronically or 45 days if submitted manually.

(6) **Client:** An individual who has applied for and been determined eligible for SCI. A "client" may also be referred to as a "member," "customer," or "consumer", or "program participant".

(7) **CMS:** Centers for medicare and medicaid services.

(8) **Continuous quality improvement (CQI):** CQI is a process for improving quality that assumes opportunities for improvement are unlimited; is customer-oriented, data driven, and results in implementation of improvements; and requires continual measurement of implemented improvements and modification of improvements, as indicated.

(9) **Coordinated long-term services (CLTS):** A coordinated program of physical health and community-based supports and services implemented under the authority of concurrent section 1915(b) and section 1915(c) waivers. The CLTS program includes individuals eligible for both medicare and medicaid, and persons eligible for medicaid long-term care services based on assessed need for nursing facility level of care. The CLTS program does not include individuals who meet eligibility criteria set forth in New Mexico's developmental disabilities and medically-fragile waiver programs.

~~(9)~~ (10) **Cost-sharing:** Premiums and co-payments owed by the member based on income group category.

~~(40)~~ (11) **Cost-sharing maximum:** The cost sharing maximum is determined during the initial eligibility determination and recertification process. The cost sharing maximum amount established at the point of eligibility determination for the benefit year represents an amount equal to 5% of the program participant's countable income.

~~(44)~~ (12) **Coverage:** Coverage month is a month where all eligibility and enrollment requirements including premium payment, if applicable are met.

~~(42)~~ (13) **Cultural competence:** Cultural competence refers to a set of congruent behaviors, attitudes and policies that come together in a system, agency, or among professionals, that enables them to work effectively in cross-cultural situations. Cultural competency involves the integration and transformation of knowledge, information and data about individuals and groups of people into specific clinical standards, skills, service approaches, techniques and marketing programs that match an individual's culture and increase the quality and appropriateness of health care and outcomes.

D. Definitions beginning with letter "D":

(1) **Delegation:** A formal process by which the MCO gives another entity the authority to perform certain functions on its behalf. The MCO retains full accountability for the delegated functions.

(2) **Denial-administrative/technical:** A denial of authorization requests due to the requested procedure, service or item not being covered by SCI, not being on the MCO pharmacy drug list, or due to provider noncompliance with administrative policies and procedures established by either the SCI MCO or the medical assistance division, except pharmaceutical services which the formulary process covers.

(3) **Denial-clinical:** A non-authorization decision at the time of an initial request for a SCI service or a pharmacy drug list request based on the member not meeting medical necessity for the requested service, ~~except pharmaceutical services which are covered by the formulary process~~. The utilization management (UM) staff may recommend an alternative service, based on the member's need for a lower level of service. If the requesting provider accepts this alternative service, it is considered a new request for the alternative service and a clinical denial of the original service request.

(4) **Disease management plan:** A comprehensive plan following nationally recognized components for chronic disease

interventions including population identification/stratification process, collaborative practice models, patient self-management education process, evidence-based practice guidelines, process and outcomes measurements, and internal quality improvement processes.

~~(4)~~ (5) **Disenrollment, MCO initiated:** When requested by an MCO for substantial reason, removal of an individual SCI member from membership in the requesting MCO, as determined by HSD, on a case-by-case basis.

~~(5)~~ (6) **Disenrollment, member initiated (switch):** When requested by a member for substantial reason, transfer of an individual SCI member as determined by HSD on a case-by-case basis, from one SCI MCO to a different SCI MCO during a member lock-in period.

~~(6)~~ (7) **Durable medical equipment (DME):** Equipment that can withstand repeated use, is primarily used to serve a medical purpose, is not useful to individuals in the absence of an illness or injury and is appropriate for use at home.

E. Definitions beginning with letter "E":

(1) **Emergency:** An emergency condition is a physical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part.

(2) **Employer:** An employer with fifty or fewer eligible employees on a full or part time basis.

(3) **Employer group:** A group of employees employed by an eligible employer who receive SCI benefits through the employer or a self-employed person who will be considered a group of one.

(4) **Employee:** A person employed by an employer who participates in the SCI health benefit plan.

(5) **Encounter:** The record of a physical or behavioral health service rendered by a provider to an MCO member, client, customer or consumer.

(6) **Enrollee:** A SCI recipient who is currently enrolled in a managed care organization.

(7) **Enrollee rights:** Rights which each SCI enrollee is guaranteed.

~~(7)~~ (8) **Enrollment:** The process of enrolling eligible members in an MCO for purposes of management and coordination of health care delivery. The

process of enrolling members either by the employer or individually in an available SCI-participating MCO for purposes of health care coverage. Enrollment encompasses selection of an MCO, notification of the selection to the MCO, and timely payment of premiums to the MCO as determined by the MCO.

(9) **Expedited appeal:** A federally mandated provision for an expedited resolution within 72 hours of the requested appeal, which includes an expedited review by the MCO of an MCO action.

~~(8)~~ (10) **External quality review organization (EQRO):** An independent organization with clinical and health services expertise ~~(that is)~~ capable of reviewing the evidence of compliance of health care delivery [systems and their internal quality assurance mechanisms] and internal quality assurance/improvement requirements.

F. Definitions beginning with letter "F":

(1) **Family planning services:** Services provided to members of childbearing age to temporarily or permanently prevent or delay pregnancy (see 8.325.3 NMAC [MAD-762], *Reproductive Health Services*).

(2) **Fraud:** An intentional deception or misrepresentation made by an entity or person, including but not limited to, an MCO, subcontractor, provider or member with the knowledge that the deception could result in some unauthorized benefit to himself or to some other previously described entity or person. It includes any act that constitutes fraud under applicable federal or state law.

(3) **Full risk contracts:** Contracts that place the MCO at risk for furnishing or arranging for comprehensive services.

G. Definitions beginning with letter "G":

(1) **Gag order:** Subcontract provisions or MCO practices, either written, oral or implied, that effectively prevent a provider from furnishing accurate or complete information to members about options for diagnosis or treatment of physical, mental or behavioral illness, injury, or condition; or prevent a provider from talking to the member or HSD about the MCO or their business practices.

(2) **Grievance (member):** Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO or its operations that is not an MCO action.

(3) **Grievance (provider):** Oral or written statement by a provider to the MCO regarding utilization management decisions ~~and/or~~ or provider payment issues.

(4) **Group of one:** Individuals who enroll without an employer group but report self-employment.

H. Definitions beginning with letter "H":

(1) **Health plan:** A health maintenance organization (HMO), managed care organization (MCO), or third party payer or their agents.

(2) **HIPAA:** Health Insurance Portability and Accountability Act of 1996.

(3) **Hospitalist:** A physician employed by a hospital to manage the care of a member admitted to the hospital for inpatient care.

(4) **Human services department (HSD):** The sole executive department in New Mexico responsible for the administration of SCI. "HSD" may also indicate the department's designee, as applicable.

I. Definitions beginning with letter "I":

(1) **Income groupings:** 0-100%, 101-150%, and 151-200% of federal poverty levels: These income groupings define the premium, copayment, and cost-sharing maximums for SCI cost-sharing purposes.

(2) **Incurred but not reported (IBNR):** Claims for services authorized or rendered for which the MCO has incurred financial liability, but the claim has not been received by the MCO. This estimating method relies on data from prior authorization and referral systems, ~~as well as~~ other data analysis systems and accepted accounting practices.

(3) **Individual:** A person who enrolls in SCI who is not a member of an eligible employer group and pays the premium amount designated for both the employee share, if applicable, based on income, and the employer share or has that amount paid on his behalf by another entity.

J. Definitions beginning with letter "J": [RESERVED]

K. Definitions beginning with letter "K": [RESERVED]

L. Definitions beginning with letter "L": [RESERVED]

M. Definitions beginning with letter "M":

(1) **Managed care organization (MCO):** An organization licensed or authorized through an agreement among state entities to manage, coordinate and receive payment for the delivery of specified services to enrolled members from a certain geographic area. Also referred to as a managed care plan and managed care program.

(2) **Marketing:** The act or process of promoting a business or commodity. Marketing includes brochures, leaflets, internet, newspaper, magazine, radio, television, billboard materials, MCO yellow page advertisements, and any other presentation materials used by an MCO,

MCO representative, or MCO subcontractor to attract or retain SCI enrollment.

~~[(3) **MCO appeal (member):** A request from a member or a provider, with the member's written consent, for review by the managed care organization (MCO) of an MCO action. An "MCO appeal" should not be confused with an applicant's or recipient's right to appeal an HSD fair hearing decision to state district court under the Public Assistance Appeals Act, NMSA 1978, Section 27-3-4 and pursuant to NMSA 1978, Section 39-3-1.1.]~~

[(4)] (3) **Medicaid:** The medical assistance program authorized under Title XIX of the Social Security Act or its successors, furnished to New Mexico residents who meet specific eligibility requirements.

[(5)] (4) **Medically necessary services:**

(a) Medically necessary services are clinical and rehabilitative physical or behavioral health services that:

(i) are essential to prevent, diagnose or treat medical or behavioral health conditions or are essential to enable the individual to attain, maintain or regain functional capacity;

(ii) are delivered in the amount, duration, scope and setting that is clinically appropriate to the specific physical and behavioral health care needs of the individual;

(iii) are provided within professionally accepted standards of practice and national guidelines; and

(iv) are required to meet the physical and behavioral health needs of the individual and are not primarily for the convenience of the individual, the provider or the payer.

(b) Application of the definition:

(i) a determination that a health care service is medically necessary does not mean that the health care service is a covered benefit or an amendment, modification or expansion of a covered benefit;

(ii) the MCO/SE making the determination of the medical necessity of clinical, rehabilitative and supportive services consistent with the ~~medicaid~~ SCI benefit package applicable to an eligible individual shall do so by: 1) evaluating individual physical and behavioral health information provided by qualified professionals who have personally evaluated the individual within their scope of practice, who have taken into consideration the individual's clinical history including the impact of previous treatment and service interventions and who have consulted with other qualified health care professionals with applicable specialty training, as appropriate; 2) considering the views and choices of the individual or the individual's legal guardian, agent or surrogate decision maker regarding the proposed covered service as

provided by the clinician or through independent verification of those views; and 3) considering the services being provided concurrently by other service delivery systems;

(iii) physical and behavioral health services shall not be denied solely because the individual has a poor prognosis; required services may not be arbitrarily denied or reduced in amount, duration or scope to an otherwise eligible individual solely because of the diagnosis, type of illness or condition.

[(6)] (5) **Member:** A eligible member enrolled in an MCO.

[(7)] (6) **Member month:** A calendar month during which a member is enrolled in an MCO.

N. Definitions beginning with letter "N":

(1) **National committee for quality assurance (NCQA):** A private national organization that develops quality standards for managed health care.

(2) **Network provider:** An individual provider, clinic, group, association or facility employed by or contracted with an MCO to furnish physical or behavioral health services to the MCO's members under the provisions of the SCI managed care contract.

(3) **Notice:** A written statement that includes what action is being taken, the reasons for the intended action, the specific regulation that requires the action, and an explanation of the circumstances under which the service may be continued if a hearing is requested.

O. Definitions beginning with letter "O": **Outreach:** The act or process of promoting an insurance product through established business channels of communications including brochures, leaflets, internet, print media, electronic media, signage or other materials used by MCOs to attract or retain SCI enrollment primarily through employer groups.

P. Definitions beginning with letter "P":

(1) **Parental or custodial relative status:** The state of having a dependent child under the age of 18 who is the son, daughter, or relative within the fifth degree of relationship living in the household and under the care and control of the individual.

(2) **Pend decision:** A prior authorization decision is considered pended when the decision is delayed due to lack of documentation, inability to contact parties involved or other reason which delays finalizing an approval. A decision by an MCO to pend approval does not extend or modify required utilization management decision timelines.

(3) **Performance measurement (PM):** Data specified by the state that enables the MCO's performance to be deter-

mined.

(4) **Plan of care:** A written document including all medically necessary services to be provided by the MCO for a specific member.

(5) **Policy:** The statement or description of requirements.

(6) **Potential enrollee:** A medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO.

~~(7)~~ (7) **Pregnancy-related services:** Medically necessary medical or surgical services related to pregnancy, including procedures to terminate pregnancy.

(8) **Preventative health services:** Services that follow current national standards for prevention including both physical and behavioral health.

~~(9)~~ (9) **Primary care:** All health services and laboratory services customarily furnished by or through a general practitioner, family physician, internal medicine physician, obstetrician/gynecologist, pediatrician, physician assistant or certified nurse practitioner.

~~(10)~~ (10) **Primary care provider (PCP):** A provider who agrees to manage and coordinate the care provided to members in the managed care program.

(11) **Procedure:** Process required to implement a policy.

Q. Definitions beginning with letter "Q": [RESERVED]

R. Definitions beginning with letter "R":

(1) **Rate cell:** A combination of category of eligibility and demographics used to isolate utilization patterns for the determination of capitation.

(2) **Received but unpaid claims (RBUC):** Claims received by the MCO but not paid affecting appropriate expense and aging accounting categories. Such claims are counted as of the date of receipt by the MCO.

(3) **Reduction of care:** A utilization management staff authorization of the type of service requested by the provider but in lesser amounts or units of service, based on the member's physical health, medical or behavioral health clinical need, than was originally requested, except pharmaceutical services which are covered by the formulary process.

(4) **Referral:** Any specialty, inpatient, outpatient, or diagnostic services that a physician or physician group orders or arranges, but does not provide directly.

(5) **Reinsurance:** Reinsurance is a proactive financial tool that may be used by an MCO to minimize exposure to losses incurred when members utilize health care services beyond anticipated levels or over-

all member utilization is greater than expected.

(6) **Risk:** The possibility that revenues of the MCO will not be sufficient to cover expenditures incurred in the delivery of contractual services.

(7) **Routine care:** All care, which is not emergent or urgent.

S. Definitions beginning with letter "S":

(1) **SCI (state coverage insurance):** The New Mexico health care program implemented under the authority of the health insurance flexibility and accountability (HIFA) waiver granted to the state by the centers for medicare and medicaid services (CMS).

(2) **SCI members with special health care needs (SCI-SHCN):** Individuals who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition, or low to severe functional limitation and who also require health and related services of a type or amount beyond that required by individuals.

(3) **Single statewide entity (SE):** Refers to the entity selected by the state of New Mexico through the collaborative to perform all contract functions defined in the behavioral health request for proposal (RFP). The SE is a single contractor selected to provide all defined service responsibilities statewide, including medicaid behavioral health benefits. The SE will receive delegation by the MCO for SCI managed care. The SE shall contract with the MCO and may be responsible for contracting with providers, paying provider claims, assuring care coordination, conducting utilization review and utilization management activities, assuring quality review and service delivery improvement, credentialing practitioners and provider agencies, privileging practitioners to deliver critical services or service approaches, evaluating and monitoring of service delivery and conducting any other administrative functions necessary to achieve the goals of the collaborative. The SE is the agent of the collaborative and shall "coordinate," "braid" or "blend" the funding, human resources and service capacity available from the various state agencies so as to increase flexibility, maximize available resources and create a seamless single behavioral health service delivery system for New Mexico."

(4) **Subcontract:** A written agreement between the MCO and a third party, or between a subcontractor and another subcontractor, to provide services.

(5) **Subcontractor:** A third party who contracts with the MCO or an MCO subcontractor for the provision of services.

T. Definitions beginning with letter "T":

(1) **Terminations of care:** The utilization management review decision made during a concurrent review, which yields a denial, based on the current service being no longer medically necessary[~~;~~ ~~except pharmaceutical services, which are covered by the formulary process~~].

(2) **Third party:** An individual entity or program, which is or may be, liable to pay all or part of the expenditures for SCI members for services furnished.

U. Definitions beginning with letter "U": **Urgent condition:** Acute signs and symptoms, which, by reasonable medical judgment, represent a condition of sufficient severity such that the absence of medical attention within 24 hours could reasonably be expected to result in an emergency condition.

V. Definitions beginning with the letter "V": **Value added benefit:** Any benefit offered to members by the MCO that is not included in the SCI benefit package.

[8.306.1.7 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.3 NMAC, sections 9, 10 and 11, effective June 1, 2008.

**8.306.3.9 ELIGIBLE MANAGED CARE ORGANIZATIONS:** The human services department (HSD) shall award contracts to managed care organizations and other state entities that meet applicable requirements and standards under state and federal law, including Title ~~IV~~ VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 (regarding education programs and activities), the Age Discrimination Act of 1975, the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Risk-based contracts will be awarded to MCOs with statutory authority to assume risk. The physical and behavioral health services to be delivered under the terms of the contract are defined in 8.306.7 NMAC, *Benefit Package*.

[8.306.3.9 NMAC - N, 7-1-05; A, 6-1-08]

### 8.306.3.10 CONTRACT MANAGEMENT:

A. **General contract requirements:** The MCOs shall meet all specified terms of the SCI contract and the Health Insurance Portability and Accountability Act (HIPAA). This includes, but is not limited to, insuring confidentiality as it relates to medical records

and any other health and enrollment information that identifies a particular member. The MCO will be held harmless in conversion to HIPAA electronic transmission formats when delays are the result of implementation issues at HSD. HSD is responsible for management of the SCI managed care contracts issued to MCOs. HSD shall provide the oversight and administrative functions to ensure MCO compliance with the terms of the SCI managed care contract.

**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. The MCO shall be legally responsible to HSD for all work performed by any MCO subcontractor. The MCO shall submit boilerplate contract language and sample contracts for various types of subcontracts. Any substantive changes to contract templates shall 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 available 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 including a description of how members access services provided under the subcontract;

(e) subcontracts shall include reimbursement rates and risk assumption, where applicable;

(f) subcontractors shall maintain records relating to services provided to members for ten years;

(g) subcontracts shall require that member information be kept confidential, as defined by federal or state law and be HIPAA compliant;

(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 provide 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 provided under the benefit package and may not request payment from HSD for services performed under the subcontract;

(k) if the subcontract includes primary care, the subcontractor shall comply with PCP requirements in the MCO contract with HSD;

(l) the subcontractor shall comply with all applicable state and federal statutes, rules and regulations, including prohibitions against discrimination;

(m) the subcontract shall not prohibit a provider or other subcontractor from entering into a contractual relationship with another MCO;

(n) the subcontract shall allow providers to assist members to access the grievance process or to act to protect member interests; ~~and~~

(o) the subcontract shall specify the time frame for submission of encounter data to the MCO;

(p) subcontracts to entities that receive annual medicaid payments of at least \$5 million shall include detailed information regarding employee education of the New Mexico and federal False Claims Act; and

(q) subcontracts shall include a provision requiring subcontractors to perform criminal background checks for all required individuals providing services.

(4) **Excluded providers:** The MCO shall not contract with any individual provider, or entity, or entity with 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; has been excluded from participation in any other state's medicaid, medicare, or any other public or private health or health insurance program; has been assessed a civil penalty under the provision of Section 1128; or who has had a contractual relationship with an entity or individual 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.

[8.306.3.10 NMAC - N, 7-1-05; A, 4-16-07; A, 6-1-08]

### 8.306.3.11 ORGANIZATIONAL REQUIREMENTS:

**A. Organizational structure:** The MCO shall provide the following information to HSD and updates, modifications, or amendments to HSD within 30

days:

(1) current organization charts or other written plans identifying organizational lines of accountability;

(2) articles of incorporation, bylaws, partnership agreements, or similar documents that describe the MCO's mission, organizational structure, board and committee composition, mechanisms to select officers and directors and board and public meeting schedules; and

(3) documents describing the MCO's relationship to parent-affiliated and related business entities including, but not limited to, subsidiaries, joint ventures or sister corporations.

**B. ~~Policies and procedures~~ Policies, procedures and job descriptions:** The MCO shall establish and maintain written policies, procedures and job descriptions as required by HSD. The MCO shall establish, maintain and implement guidelines for developing, reviewing and approving policies, procedures and job descriptions. The MCO shall provide MCO policies, procedures, and job descriptions for key personnel and guidelines for review to HSD on request. The MCO shall notify HSD within 30 days when changes occur in key personnel.

(1) **Review of policies and procedures:** The MCO shall review the MCO's policies and procedures at least every two years, unless otherwise specified herein, to ensure that they reflect the MCO's current best industry practices. Job descriptions shall be reviewed to ensure that current employee duties reflect written requirements. Substantive modification or amendment to key positions shall be reviewed by HSD.

(2) **Distribution of information:** The MCO shall distribute to providers information necessary to ensure that providers meet all contract requirements.

(3) **Business requirements:** The MCO shall have the administrative, information and other systems in place necessary to fulfill the terms of the SCI managed care contract. Any change in identified key MCO personnel shall conform to the requirements of the SCI managed care contract. The MCO shall retain financial records, supporting documents, statistical records, and all other records for a period of ten (10) years from the date of submission of the final expenditure report, except as specified by HSD.

(4) **Financial requirements:** The MCO shall meet the requirements of federal and state law with respect to solvency and performance guarantees for the duration of the SCI managed care contract. The MCO shall meet additional financial requirements specified in the SCI managed care contract.

(5) **Member services:** The MCO



shall have a member services function that coordinates communication with members and acts as a member advocate. Member services shall include sufficient staff to assist members in resolving problems or making inquiries. The MCO's policies and procedures shall be made available on request to members or member representatives for review during normal business hours.

**(6) Consumer advisory board:**

The MCO shall establish representation on its current medicaid managed care consumer advisory board that includes SCI. This representation may have regional representation of ~~[customers]~~ consumers, family members, advocates and providers who participate in SCI. The MCO can also devise a method, approved by HSD/MAD, to elicit feedback from SCI consumers and address their needs, if formation of a separate SCI consumer advisory board is deemed impractical because of enrollment of less than 2,500 members.

(a) Consumer advisory board members shall serve to advise the MCO on issues concerning service delivery and quality of service, the member bill of rights and member responsibilities, resolution of member grievances and the needs of groups represented by board member as they pertain to SCI.

(b) The MCO shall attend at least two statewide consumer-driven or hosted meetings, relevant to the SCI population, per year, of the MCO's choosing, that focus on consumer issues and needs to ensure that member's concerns are heard and addressed.

**(7) Contract enforcement:** HSD shall enforce contractual and state and federal regulatory requirements specified in the scope of work of the contract. HSD may use the following types of sanctions for less than satisfactory or nonperformance of contract provisions:

(a) require plans of correction;  
(b) impose directed plans of correction;

(c) impose civil or administrative monetary penalties and fines under the following guidelines:

(i) a maximum of \$25,000.00 for each of the following determinations: failure to provide service; misrepresentation or false statements to members, potential members, or health care providers; failure to comply with physician incentive plan requirements; and marketing violations;

(ii) a maximum of \$100,000.00 for each of the following determinations: discrimination or misrepresentation or false statements to HSD, or CMS;

(iii) a maximum of \$15,000.00 for each SCI member that HSD

determines was not enrolled, or reenrolled, or enrollment was terminated because of a discriminatory practice; this is subject to an overall limit of \$100,000.00;

(iv) a maximum of \$25,000.00 or double the amount of the excess charges, whichever is greater, for premiums or charges in excess of the amount permitted under the SCI program; the state shall deduct from the penalty the amount of overcharge and return it to the affected enrollee; and

(d) rescind marketing consent;  
(e) suspend new enrollment, including default enrollment after the effective date of the sanction;

(f) appoint a state monitor, the cost of which shall be borne by the MCO;

(g) deny payment of capitation rates;

(h) assess actual damages;

(i) assess liquidated damages;

(j) remove members with third party coverage from enrollment with the MCO;

(k) allow members to terminate enrollment;

(l) suspend or terminate MCO contract;

(m) apply other sanctions and remedies specified by HSD; and

(n) impose temporary management only if it finds, through on-site survey, enrollee complaints, or any other means that;

(i) there is continued behavior by the MCO as described under sub-paragraph (c) above including but not limited to behavior that is prohibited under specific federal law granting states appropriations for medicaid services, 42 USC Sections 1396b(m) or 1396u-2; or

(ii) there is substantial risk to member's health; or

(iii) the sanction is necessary to ensure the health of the MCO's members while improvement is made to remedy violations made under Subparagraph (c) above; or until there is orderly termination or reorganization of the MCO; and

(iv) there shall be no provision for hearing prior to the imposition of temporary management and HSD shall not terminate temporary management until it determines that the MCO can ensure that the sanctioned behavior will not re-occur.

[8.306.3.11 NMAC - N, 7-1-05; A, 4-16-07; A, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.5 NMAC, section 14, effective June 1, 2008.

**8.306.5.14 SCI MARKETING-OUTREACH GUIDELINES:** When marketing to SCI members, MCOs shall follow the SCI marketing guidelines.

A. **Minimum marketing and outreach requirements:** Marketing is defined as the act or process of promoting a business or commodity. The marketing and outreach material shall meet the following minimum requirements:

(1) marketing and outreach materials shall meet requirements for all communication with SCI members, as required in the quality standards (8.305.8.15 NMAC, *member bill of rights*) and incorporated into the managed care contract;

(2) all marketing or outreach materials produced by the MCO under the SCI contract shall state that such services are funded in part under contract with the state of New Mexico;

(3) marketing and outreach information provided to members shall be accurate, not misleading, and non-threatening;

(4) if there is a population of greater than 5% in the MCO membership, as identified by the MCO and HSD, that has limited English proficiency, as identified by the MCO or HSD, marketing materials shall be available in the language of that population; and

(5) other requirements specified by the state.

B. **Scope of marketing guidelines:** Marketing materials are defined as brochures and leaflets; newspaper, magazine, radio, television, billboard, and MCO yellow page advertisement, and web site and presentation materials used by an MCO and MCO representative or MCO sub-contractor to attract and retain SCI enrollment. HSD may request, review and approve or disapprove any communication to any SCI member. HSD may request, review and approve or disapprove any communication to any SCI member regarding behavioral health. MCOs are not restricted by HSD in their general communications to the public. HSD shall approve advertisements mailed to, distributed to, or aimed at SCI members and marketing material that mentions SCI, medicaid, medical assistance, Title XIX, Title XXI or Salud! or makes reference to medicaid behavioral health services. The MCO shall notify HSD of significant format changes to advertisements. Examples of medicaid-specific materials would be those that:

(1) are in any way targeted to SCI populations, such as billboards or bus posters disproportionately located in low-income neighborhoods; or

(2) contain language or information designed to attract SCI enrollment.

C. **Advertising and marketing material:** Medicaid-specific advertising and marketing materials, including materials disseminated by a sub-contractor and information disseminated via the internet requires HSD approval. In reviewing this information, HSD shall apply a variety of criteria.

(1) **Accuracy:** The content of the material shall be accurate. Information deemed inaccurate shall be disallowed.

(2) **Misleading references:** Misleading information about the MCO shall not be allowed even if it is accurate.

D. **Marketing and outreach activities not permitted:** The following marketing and outreach activities are not permitted regardless of the method of communication (oral, written or other means of communication) or whether the activity is performed by the MCO directly, its network providers, its subcontractors or any other party affiliated with the MCO. HSD may prohibit additional marketing activities at its discretion.

(1) asserting or implying that a member will lose SCI benefits if he does not enroll with the MCO or creating other scenarios that do not accurately depict the consequences of choosing a different MCO;

(2) designing a marketing or outreach plan that discourages or encourages MCO selection based on a potential member's health status or risk;

(3) making inaccurate, misleading or exaggerated statements designed to recruit a potential member;

(4) asserting or implying that the MCO offers unique covered services when another MCO provides the same or similar services;

(5) the use of more than nominal gifts, such as diapers, toasters, infant formula or other incentives to entice members to join a specific health plan;

(6) telemarketing [~~or face-to-face~~] or other cold call marketing with potential members;

(7) conducting any other marketing activity prohibited by HSD;

(8) explicit direct marketing to members enrolled with other MCOs unless the member requests the information;

(9) distributing any marketing materials without first obtaining HSD approval;

(10) seeking to influence enrollment in conjunction with the sale or offering of any private insurance except in the instance of combination groups that offer commercial coverage and SCI to those

employees who may qualify:

(11) engaging in [~~door-to-door~~] telephone or other cold call marketing activities, directly or indirectly; and

(12) other requirements specified by HSD.

E. **Marketing in current care sites:** Promotional materials may be made available to members and potential MCO enrollees in care delivery sites, including patient waiting areas, if HSD has prior approved the content. Face-to-face meetings with MCO staff, at health care delivery sites, for the purpose of marketing to potential enrollees shall not be permitted.

F. **Provider communications with medicaid members about MCO options:** HSD marketing restrictions shall apply to MCO subcontractors and providers as well as to the MCO. MCOs are required to notify participating providers of the HSD marketing restrictions, including providing a copy of these regulations. HSD shall not review yellow page ads of individual providers, unless specifically requested to do so.

G. **Member-initiated meetings with MCO staff prior to enrollment:** Face-to-face meetings requested by members are permitted. These meetings may occur at a mutually agreed upon site.

H. **Mailings by the MCO:** MCO mailings shall be permitted in response to member oral or written requests for information. The content of marketing or promotional mailings shall be approved by HSD. MCOs may, with HSD approval, provide potential members with information regarding the MCO/SCI benefit package. MCOs shall not send gifts, however nominal in value, in these mailings. MCOs may send solicited and unsolicited mailings to members and potential members. Unsolicited mailings are defined as: newsletters; notification of outreach events and member services meetings; educational materials and literature related to the MCO preventive medicine initiatives, (such as, diabetes screening, drug and alcohol awareness, and mammograms). HSD shall approve the content of mailings except health education materials. The target audience of the mailings shall be approved by HSD.

I. **Group meetings:** The MCO may hold public meetings. HSD shall be furnished with notice of the meetings and shall prior approve marketing material to be presented at the meeting. HSD shall approve the methodology used by the MCO to solicit attendance for the public meetings. HSD may attend the meeting.

J. **Light refreshments for members at meetings:** The MCO may offer light refreshments at approved group meetings. The availability of food and beverages shall not be mentioned in advertise-

ments for the meetings. *Alcoholic beverages shall not be offered at meetings.*

K. **Gifts, cash incentives or rebates to potential members:** MCOs and their providers, with HSD approval, may disseminate marketing materials, including nominal gifts such as pens, key chains and magnets to potential members.

L. **Gifts to members at health milestones unrelated to enrollment:** Members may be given "rewards" for accessing care, such as a baby T-shirt when a woman completes a targeted series of prenatal visits. Items that reinforce a member's healthy behavior, (car seats, infant formula, magnets and telephone labels) that advertise the member services hotline and the PCP office telephone number for members are examples of "rewards". HSD shall approve gifts with a retail value of over \$25.00. Health education videos may be provided. HSD encourages MCOs to include reward items in information sent to new MCO members.

M. **Marketing time frames:** The MCO may initiate marketing and outreach activities at any time.

[8.306.5.14 NMAC - N, 7-1-05; A/E, 8-1-07; A, 6-1-08]

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## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.6 NMAC, section 12, effective June 1, 2008.

**8.306.6.12 PRIMARY CARE PROVIDERS:** The primary care provider (PCP) shall be a participating MCO medical provider who has the responsibility for supervising, coordinating and providing primary health care to members, initiating referrals for specialist care and maintaining the continuity of the member's care. The MCO shall distribute information to the providers explaining the SCI-specific policies and procedures outlining PCP responsibilities.

A. **Primary care responsibilities:** The MCO shall ensure that the following primary care responsibilities are met by the PCP or in another manner:

(1) 24-hour, seven day a week access to care;

(2) coordination and continuity of care with providers who participate within the MCO network and with providers outside the MCO network according to MCO policy;

(3) maintenance of a current medical record for the member, including documentation of services provided to the member by the PCP and specialty or referral services;

(4) requiring PCPs contracted

with the MCO to vaccinate members in their offices and not refer members elsewhere for immunizations;

(5) ensuring the member receives appropriate prevention services for his age group;

(6) following MCO established procedures for coordination of services for members with providers participating in the MCO network; and

(7) the MCO shall develop and implement policies and procedures governing how coordination with the PCP will occur with hospitals that require in-house staff to examine or treat members having outpatient or ambulatory surgical procedures performed.

**B. Types of primary care providers:** The MCO may designate the following providers as PCPs, as appropriate:

(1) medical doctors or doctors of osteopathic medicine with the following specialties: general practice, family practice, internal medicine, gerontology, obstetrics, and gynecology;

(2) certified nurse practitioners, certified nurse midwives and physician assistants;

(3) specialists, on an individualized basis for members whose care is more appropriately managed by a specialist, such as members with infectious diseases, chronic illness or a disability;

(4) primary care teams consisting of residents and a supervising faculty physician for contracts with teaching facilities or teams that includes certified mid-level practitioners who, at the member's request, may serve as the point of first contact; in both instances, the MCO shall organize its teams to ensure continuity of care to members and shall identify a "lead physician" within the team for each member; the "lead physician" shall be an attending physician (medical students, interns and residents cannot serve as the "lead physician"); or

(5) other providers who meet the MCO credentialing requirements as a PCP.

**C. Providers that shall not be excluded as PCPs:** MCOs shall not exclude providers as primary care providers based on the proportion of high-risk patients in their caseloads.

**D. Selection or assignment to a PCP:** The MCO shall maintain written policies and procedures governing the process of member selection of a PCP and requests for a change in PCP.

(1) **Initial enrollment:** At the time of enrollment into the MCO, the MCO shall ensure that each member may choose a PCP within a reasonable distance from the member's residence.

(a) The MCO shall assume responsibility for assisting members with

PCP selection.

(b) The process whereby the MCO assigns members to PCPs shall include at least the following features:

(i) the MCO shall contact the member within five business days of enrollment and provide information on options for selecting a PCP;

(ii) the MCO shall offer freedom of choice to members in making a selection;

(iii) a member shall choose a PCP or the MCO will assign a PCP within 15 calendar days of enrollment with the MCO; a member may select a PCP from the information provided by the MCO; a member may choose a PCP anytime during this selection period;

(iv) the MCO shall notify the member in writing of his PCP's name, location and office telephone number; and

(v) the MCO shall provide the member with an opportunity to select a different PCP if he is dissatisfied with assigned PCP.

(2) **Subsequent change in PCP initiated by member:** Members may initiate a PCP change at any time, for any reason. The request for PCP change may be made in writing or by telephone. If the change is requested by the 20<sup>th</sup> day of the month it will become effective the first day of the following month. If the request is made after the 20<sup>th</sup> day it will become effective the first day of the second month following the request.

(3) **Subsequent change in PCP initiated by the MCO:** In instances where a PCP has been terminated, the MCO shall allow affected members to select another PCP or make an assignment within 15 days of the termination effective date. The MCO shall notify the member in writing of the PCP's name, location and office telephone number. The MCO may initiate a PCP change for a member under certain circumstances such as:

(a) the member and MCO agree that assignment to a different PCP in the MCO is in the member's best interest, based on the member's medical condition;

(b) a member's PCP ceases to participate in the MCO's network;

(c) a member's behavior toward the PCP is such that it is not feasible to safely or prudently provide medical care and the PCP has made all reasonable efforts to accommodate the member; or

(d) a member has initiated legal action against the PCP.

(4) **Provider lock-in:** HSD [MCOs] shall allow the MCO to require that a member see a certain provider while ensuring reasonable access to quality services when identification of utilization of

unnecessary services or a member's behavior is detrimental or indicates a need to provide case continuity. Prior to placing a member on provider lock-in, the MCO shall inform the member of the intent to lock-in, including the reasons for imposing the provider lock-in and that the restriction does not apply to emergency services furnished to the member. The MCO's grievance procedure shall be made available to a member disagreeing with the provider lock-in. The member shall be removed from provider lock-in when the MCO has determined that the utilization problems or detrimental behavior have ceased and that recurrence of the problems is judged to be improbable. HSD shall be notified of provider lock-ins on a quarterly basis and informed of provider lock-in removals at the time they occur.

**E. MCO responsibility for PCP services:** The MCO shall be responsible for monitoring PCP actions to ensure compliance with MCO and HSD policies. The MCO shall ensure that PCPs are successfully identifying and referring members to specialty providers as medically necessary.

[8.306.6.12 NMAC - N, 7-1-05; A, 6-1-08]

**8.306.6.17 MCO PROVIDER TRANSITION OF CARE:** The MCO shall notify HSD of unexpected changes to the composition of its provider network that would have a significantly negative effect on member access to services or on the MCO's ability to deliver services included in the benefit package in a timely manner. In the event that provider network changes are unexpected or when it is determined that a provider is unable to meet their contractual obligation, the MCO shall be required to submit a transition plan(s) to HSD for all affected members.

[8.306.6.17 NMAC - N, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.7 NMAC, sections 9 and 11, effective June 1, 2008.

**8.306.7.9 BENEFIT PACKAGE:** This part defines the state coverage insurance (SCI) benefit package for which the MCO will be paid fixed payment rates. The MCO shall cover these services. The MCO shall not delete benefits from the SCI-defined benefit package. An MCO is encouraged to provide ~~an enhanced~~ a value added benefit package, which could include health-related educational, preventive, outreach and ~~enhanced~~ value added physical and behavioral health ~~services~~

benefits. The MCO may utilize providers licensed in accordance with state and federal requirements to deliver services.

[8.306.7.9 NMAC - N, 7-1-05; A, 6-1-08]

### 8.306.7.11 SERVICES INCLUDED IN THE SCI BENEFIT PACKAGE:

The SCI benefit package includes provider and consultation services and supplies that are reasonably required to maintain good health and are provided by or under the direction of the member's PCP. The following lists covered services and provides additional information.

#### A. Provider services:

- (1) office visits;
- (2) home visits;
- (3) hospital and inpatient physical rehabilitation facility visits by physician;
- (4) inpatient and outpatient surgery (includes assistant surgeon's charges);
- (5) office procedures;
- (6) inpatient professional care services, including pathologists, radiologists and anesthesiologists;
- (7) allergy testing;
- (8) allergy injections;
- (9) antigen serum;
- (10) injections in accordance with

accepted medical practice to treat acute conditions, which are customarily administered in a provider's office;

(11) injections in accordance with acceptable medical practice used to treat chronic conditions, including, but not limited to, diseases such as rheumatoid arthritis, crohn's disease, and hepatitis C; and

(12) routine and diagnostic x-rays and clinical laboratory tests.

**B. Inpatient hospital services:** The benefit package includes inpatient hospital services as detailed below.

(1) Hospital admissions must have prior authorization and are to be provided under the direction of the member's PCP or a consulting provider to whom the member is referred by his PCP. Any service or procedure not outlined below requires a prior authorization.

(2) Inpatient hospitalization coverage is limited to twenty-five (25) days per benefit year. This twenty-five (25)-day limitation is combined with home health services and inpatient physical rehabilitation.

(3) Inpatient hospital services include:

(a) semi-private room and board accommodations, including general duty nursing care;

(b) private room and board accommodations when medically necessary; prior authorization is required;

(c) in-hospital therapeutic and support care, services, supplies and appliances, including care in specialized intensive and coronary care units;

(d) use of all hospital facilities, including operating, delivery, recovery, and treatment rooms and equipment;

(e) laboratory tests, x-rays, electrocardiograms (EKGs), electroencephalograms (EEGs), and other diagnostic tests performed in conjunction with a member's admission to a hospital;

(f) anesthetics, oxygen, pharmaceuticals, medications, and other biological;

(g) dressings, casts, and special equipment when supplied by the hospital for use in the hospital;

(h) inpatient meals and special diets;

(i) inpatient radiation therapy [and/or] or inhalation therapy;

(j) rehabilitative services - physical, occupational, and speech therapy;

(k) administration of whole blood, blood plasma, and components;

(l) discharge planning and coordination of services; and

(m) maternity care.

#### C. Outpatient services:

The benefit package includes outpatient services performed in a hospital or other approved outpatient facility. Outpatient services:

(1) can reasonably be provided on an ambulatory basis;

(2) are preventive, diagnostic or treatment procedures provided under the direction of the member's PCP or a consulting provider to whom the member is referred by the PCP;

(3) require prior authorization, unless otherwise noted; and

(4) the following provides additional information on covered outpatient services and associated co-payments:

(a) surgeries, including use of operating, delivery, recovery, treatment rooms, equipment and supplies, including anesthesia, dressings and medications;

(b) radiation therapy and chemotherapy;

(c) magnetic resonance imaging (MRI);

(d) positron emission tomography (PET) tests;

(e) CT scan;

(f) holter monitors and cardiac event monitors;

(g) routine and diagnostic x-rays, clinical laboratory tests, electrocardiograms (EKGs), and electroencephalograms (EEGs);

(h) cardiovascular rehabilitation; and

(i) rehabilitative services - physical, occupational, and speech therapy; rehabilitative services for short-term physical, occupational, and speech therapies are covered; short-term therapy includes therapy services that produce significant and demonstrable improvement within a two-

month period from the initial date of treatment; the member's PCP or other appropriate treating provider to whom the member has been referred shall determine in advance of rehabilitative services that these services can be expected to result in significant improvement in the member's physical condition within a period of two months; requests for rehabilitative services from therapists will not be approved; these services shall be requested by the ordering provider and require a prior authorization.

(i) Extension of short-term therapy beyond the initial two months may be extended for one period of up to two months, contingent on the approval of the MCO'S medical director, only if such services can be expected to result in continued significant improvement of the member's physical condition within the extension period. Expectation of significant improvement will be established if the member has complied fully with the instructions for care and has met all therapy goals for the preceding two-month period as documented in the therapy record.

(ii) Therapy services extending beyond the two-month period from the initial date of treatment are considered long-term therapy and are not covered under SCI. Long-term therapy includes treatment for chronic or incurable conditions for which rehabilitative services produce minimal or temporary change or relief. Chronic conditions include, but are not limited to, muscular dystrophy, cerebral palsy, developmental delay, myofascial pain disorders, arthritis, autism, and syndromes of chromosomal abnormalities.

**D. Emergency and urgently needed health services:**

The benefit package includes emergency and urgently needed health services. These services are available twenty-four (24) hours a day, seven (7) days a week. The benefit package includes inpatient and outpatient services meeting the definition of emergency services, which shall be provided without regard to prior authorization or the provider's contractual relationship with the MCO. If the services are needed immediately and the time necessary to transport the member to a network provider would mean risk of permanent damage to the member's health, emergency services shall be available through a facility or provider participating in the MCO/SE network or from a facility or provider not participating in the MCO/SE network. Either provider type shall be paid for the provision of services on a timely basis. Emergency services include services needed to evaluate and stabilize an emergency medical or behavioral condition. Post stabilization care services means covered services, related to an emergency medical or behavioral condition, that are provided after a member is stabilized in

order to maintain the stabilized condition. This coverage may include improving or resolving the member's condition if either the MCO has authorized post-stabilization services in the facility in question, or there has been no authorization; and

(1) the hospital was unable to contact the MCO; or

(2) the hospital contacted the MCO but did not get instructions within an hour of the request; the following provides additional information on covered services and required co-payments.

(a) Emergency health services can be provided in or out of the service area. Coverage is provided for trauma services at an appropriately designated trauma center according to established emergency medical services triage and transportation protocols.

(i) Prior authorization is not required for emergency care.

(ii) Coverage for trauma services and all other emergency health services from non-participating providers will continue at least until the member is medically stable, does not require critical care, and can be safely transferred to another facility based on the judgment of the attending participating provider in consultation with the MCO. The MCO may transfer hospitalized members to the care of participating providers as soon as it is medically appropriate. Such members shall be stabilized and the transfer effected in accordance with federal law.

(iii) The member is responsible for charges for non-covered services.

(b) Use of an urgent care center, where available, in or out of the service area for treatment of sudden unexpected acute illness or injury that requires prompt medical attention to prevent jeopardy to the member if such services were not received immediately.

(i) A non-participating urgent care center may be used only if the member cannot reasonably access a participating provider.

(ii) Routine or follow-up medical treatment shall be provided by or through a participating provider.

**E. Women's health services:** The benefit package includes any gynecological examinations or care related to pregnancy, for primary and preventive obstetrics, and gynecological services required as a result of any gynecological examination or condition. Covered women's health services may be obtained from the member's PCP, or a participating women's health care provider or a consulting provider to whom the member has been referred by her PCP. The following lists covered services and provides additional information:

(1) office visits;  
(2) low-dose mammography screening for detection of breast cancer;

(3) cytological screening to determine the presence of pre-cancerous or cancerous conditions or other health problems; and

(4) services related to the diagnosis, treatment and appropriate management of osteoporosis.

**F. Prenatal and post-partum care:** Prenatal care includes a minimum of one prenatal office visit per month during the first two trimesters of pregnancy; two (2) office visits per month during the seventh and eighth months of pregnancy; and one (1) office visit per week during the ninth month until tremor as medically indicated, provided that coverage for each office visit shall include prenatal counseling and education.

(1) Following delivery of a newborn, a female member is entitled to either:

(a) post-partum care in the home consisting of up to three visits; or

(b) a minimum hospital stay of specified inpatient hours; the choice of either home care or inpatient care will be made based on discussion between the participating provider and the member.

(2) If post-partum home care is elected, the care shall be rendered in accordance with accepted maternal and neonatal physician assessments, and by a home care participating provider who is properly licensed, trained and experienced. A maximum of three home care visits are allowable.

(3) If inpatient care is elected, a mother and her newborn child in a health care facility will be entitled to a minimum stay of 48 hours following a vaginal delivery or 96 hours following a caesarian section.

(4) Non-hospital births - prior authorization is required.

**G. Preventive health services:** The benefit package includes preventive health services. Preventive health services are provided to a member when performed by or under the direction of the member's PCP or a participating provider to whom the member has been referred by his PCP, and are consistent with the MCO'S preventive health guidelines. The following lists covered services and provides additional information.

(1) Physical exams, including health appraisal exams, laboratory and radiological tests, hearing and vision screenings, and early detection procedures.

(2) Periodic tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or a fractionated cholesterol level.

(3) Periodic glaucoma eye tests

for all persons thirty-five (35) years of age and older.

(4) Periodic stool examination for the presence of blood for all persons 40 years of age or older.

(5) Periodic mammograms for detection of breast cancer as follows: one low dose baseline mammogram for women ages 35 through 39, one low dose mammogram biennially for women ages 40 through 49 and one low dose mammogram annually for women over age 50.

(6) All members may receive an annual consultation to discuss lifestyle behaviors that promote health and well-being. The consultation may include, but not be limited to:

(a) smoking control;

(b) nutrition and diet recommendations;

(c) exercise plans;

(d) lower back protection;

(e) immunization practices;

(f) breast self-examinations;

(g) testicular self-examinations;

or

(h) use of seat belts in motor vehicles.

(7) Adult immunizations in accordance with the recommendations of the advisory committee on immunization practices (ACIP).

(8) Periodic colon examination of thirty-five (35) to sixty (60) centimeters [~~and/or~~ or barium enema for all persons forty-five (45) years of age or older.

(9) Voluntary family planning services.

(10) Insertion of contraceptive devices.

(11) Removal of contraceptive devices.

(12) Surgical sterilization.

(13) Pregnancy termination procedures: The benefit package includes services for the termination of pregnancy and pre or post-decision counseling or psychological services as detailed in 8.325.7 NMAC, *Pregnancy Termination Procedures*.

**H. Dialysis:** The benefit package includes dialysis services. Long-term hemodialysis and continuous ambulatory peritoneal dialysis (CAPD) is provided with a prior authorization and performed by or under the direction of the member's PCP or a consulting provider to whom the member has been referred by his PCP. The member shall advise the MCO of the date the treatment commenced.

**I. Inpatient physical rehabilitation:** The benefit package includes inpatient physical rehabilitation. The following lists covered services and provides additional information.

(1) Inpatient physical rehabilita-

tion services require prior authorization, and services are to be provided under the direction of the member's PCP or a consulting provider to whom the member is referred by his PCP.

(2) Inpatient physical rehabilitation facility coverage is limited to twenty-five (25) days per benefit year. This twenty-five (25)-day limitation is combined with inpatient hospital and home health services.

**J. Home health services/home intravenous services:** The benefit package includes home health services, which are health services provided to a member confined to his home due to physical illness. The following lists covered services and provides additional information.

(1) Home health services and home intravenous services are provided by a home health agency (HHA) at a member's home with a prior authorization and prescribed by the member's PCP or a consulting provider to whom the member is referred by his PCP.

(2) Home health services in lieu of hospitalization are limited to twenty-five (25) days per benefit year provided that a period of inpatient hospitalization coverage shall precede any home health care coverage or the PCP shall provide a statement indicating that inpatient hospitalization would be necessary in the absence of home health services. This twenty-five (25) day limitation is combined with inpatient hospitalization and inpatient physical rehabilitation.

(3) Services provided by a registered nurse or a licensed practical nurse; by physical, occupational, and respiratory therapists; speech pathologists; or by a home health aide are covered.

(4) Prescription supplies for the provision of home health services at the time of a home health visit are covered.

(5) Home intravenous services are covered.

(6) Tube feedings as the sole source of nutrition are covered.

**K. Durable medical equipment, medical supplies, orthotic appliances and prosthetic devices:** The benefit package includes durable medical equipment, medical supplies, orthotic appliances, and prosthetic devices. The following lists covered services and provides additional information.

(1) Prior authorization is required.

(2) Durable medical equipment, medical supplies, orthotic appliances and prosthetic devices with allowable charges of \$200 or more per item, including tax and any shipping charges are covered. Rental price cannot exceed purchase price.

(3) Durable medical equipment that requires a provider's prescription for purchase or rental is covered unless other-

wise excluded.

(4) Medical supplies that require a provider's prescription for purchase are covered unless otherwise excluded.

(5) Orthotic appliances that require a provider's prescription for purchase are covered unless otherwise excluded.

(6) Prosthetic devices are covered only when they replace a limb or other part of the body after accidental or surgical removal ~~and/or~~ or when the body's growth or atrophy necessitates replacement, unless otherwise excluded.

(7) Breast prostheses and bras required in conjunction with reconstructive surgery are covered, except as limited.

(8) Repair or replacement of durable medical equipment, orthotic appliances and prosthetic devices due to normal wear ~~and/or~~ or when necessitated by the body's growth or atrophy are covered.

**L. Ambulance services:** The benefit package includes emergency transport services identified below.

(1) When necessary to protect the life of the mother or infant, emergency transport includes transport for medically high-risk pregnant women with an impending delivery to the nearest tertiary care facility.

(2) The MCO will not pay more for air ambulance than it would have paid for transportation over the same distance by surface emergency medical transportation services unless the member's health condition renders the utilization of such surface services medically inappropriate.

(3) Emergency ground ambulance transportation to the nearest facility where emergency care and treatment can be rendered and when provided by a licensed ambulance service

(4) Emergency, trauma-related air ambulance transportation - prior authorization is required, when feasible.

**M. Oral surgery:** The benefit package includes limited oral surgery benefits with prior authorization. The following lists covered services and provides additional information. General dental and oral surgery services with a prior authorization only in conjunction with:

(1) Accidental injury to sound natural teeth, the jawbones, or surrounding tissues, treatment for injury is covered when initial treatment for the injury is sought within seventy-two (72) hours of the injury. Teeth with crowns or restorations are not considered to be sound natural teeth. The injury shall be properly documented during the initial treatment. Services shall be completed within twelve (12) months of the date of injury. The MCO will require dental x-rays.

(2) Surgical procedures to correct non-dental, non-maxillo-mandibular physio-

logic conditions that produce demonstrable impairment of function are covered.

(3) Removal or biopsy, when pathological examination is required of tumors and cysts of the jaws, cheeks, lips, tongue, roof and floor of the mouth are covered.

(4) External incision and drainage of cellulitis; incision of infected accessory sinuses, salivary glands or ducts; and removal of stones from salivary ducts are covered.

(5) Surgical procedures to correct accidental injuries of the jaws and facial bones, cheeks, lips, tongue, roof and floor of mouth are covered.

**N. Reconstructive surgery:** The benefit package includes reconstructive surgery as provided below.

(1) Reconstructive surgery from which an improvement in physiological function can be expected if performed for the correction of functional disorders - prior authorization is required. Functional disorder shall result from accidental injury or from congenital defects or disease.

(2) Prosthetic devices and reconstruction surgery of the affected breast or other breast to produce symmetry related to mastectomy. This coverage includes physical complications at all stages of mastectomy, including lymph edemas. A member is allowed at least forty-eight (48) hours of inpatient care following mastectomy and twenty four (24) hours of inpatient care following a lymph node dissection for the treatment of breast cancer.

**O. Prescription drugs:** The benefit package includes all generic prescription drugs and brand name drugs included on the MCO'S preferred drug list (PDL). Exceptions to the PDL depend on MCO policy.

**P. Diabetes treatment:** The benefit package includes diabetes treatment. The MCO will maintain an adequate PDL to provide resources to members with diabetes; and guarantee reimbursement or coverage for prescription drugs, insulin, supplies, equipment and appliances with a prior authorization described in this subsection within the limits of the MCO. The following lists covered services and provides additional information.

(1) Equipment, supplies and appliances to treat diabetes to include:

(a) blood glucose monitors, including those for the legally blind;

(b) test strips for blood glucose monitors;

(c) visual reading urine and ketone strips;

(d) lancets and lancet devices;

(e) insulin (limit two (2) vials per co-payment);

(f) injection aids, including those adaptable to meet the needs of the legally

blind;

(g) syringes;  
(h) prescriptive oral agents for controlling blood sugar levels;

(i) medically necessary podiatric appliances for prevention of foot complications associated with diabetes, including therapeutic molded or depth inlay shoes, functional orthotic appliances, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and

(j) glucagons emergency kits.  
(2) Diabetes self-management training by a certified, registered or licensed health care professional with recent education in diabetes management, which is limited to:

(a) medically necessary visits upon the diagnosis of diabetes;

(b) visits following a provider diagnosis that represents a significant change in the member's symptoms or condition that warrants changes in the member's self-management;

(c) visits when re-education or refresher training is prescribed by a health care provider with prescribing authority; and

(d) medical nutrition therapy related to diabetes management.

**Q. Behavioral health and substance abuse services:** The benefit package includes behavioral health and substance abuse services. Inpatient behavioral health services are limited to twenty-five (25) days per benefit year with prior authorization.

**(1) Behavioral health service:**

(a) Outpatient office visits for mental health evaluation and treatment; injectable forms of haloperidol or fluphenazine are included in the office visit co-payment. Prior authorization is required for over seven (7) visits.

(b) Inpatient mental health services provided in a psychiatric hospital or an acute care general hospital - *prior authorization is required.*

**(2) Substance abuse service:**

(a) outpatient substance abuse including visits, detoxification and intensive outpatient care limited to forty two (42) days per benefit year; and

(b) inpatient substance abuse detoxification - *prior authorization is required.*

**R. Annual limits on out-of-pocket expenditures:** Out-of-pocket charges for all participants will be limited to 5 percent of maximum gross family income per benefit year. Pharmacy out-of-pocket charges for all participants will be limited to \$12 per month.

**S. Limitations on coverage:** The benefit package is limited to \$100,000 in benefits payable per member

per benefit year.

**T. Pregnancy termination procedures:** The MCO shall provide coverage of pregnancy termination as allowed per 42 CFR 457.475. ~~[A certification from the provider must be provided to the MCO.]~~ Medically necessary pregnancy terminations which do not meet the requirements of 42 CFR 457.475 are excluded from the capitation payment made to the MCO and shall be reimbursed solely from state funds pursuant to the provisions of 8.325.7 NMAC.

[8.306.7.11 NMAC - N, 7-1-05; A, 4-16-07; A, 6-1-08]

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

This is an amendment to 8.306.12 NMAC, sections 9, 10, 11, 12 and 13, effective June 1, 2008.

**8.306.12.9 ~~GRIEVANCE SYSTEM:~~**

~~A. The MCO shall have a grievance system in place for members that includes a grievance process related to dissatisfaction, and an appeals process related to an MCO action, including the opportunity to request an HSD fair hearing.~~

~~B. A grievance is a member's expression of dissatisfaction about any matter or aspect of the MCO or its operation other than an MCO action, as defined below.~~

~~C. An appeal is a request for review by the MCO of an MCO action. An action is the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or the failure to provide services in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.~~

~~D. The member, legal guardian of the member for minors or incapacitated adults, or a representative of the member as designated in writing to the MCO, has the right to file a grievance or an appeal of the MCO action on behalf of the member. A provider acting on behalf of the member and with the member's written consent may file a grievance and/or an appeal of an MCO action.~~

~~E. In addition to the MCO grievance and appeal process described above, a member, legal guardian of the member for an incapacitated adult, or the representative of the member has the right to request a fair hearing on behalf of the member with HSD directly as described in 8.352.2 NMAC, Fair Hearings, if an MCO~~

~~decision results in termination, modification, suspension, reduction, or denial of services to the member or if the member believes the MCO has taken an action erroneously. A fair hearing may be requested only after the MCO grievance/appeal process has been exhausted. Issues of late premium payment or failure to pay the premium addressed through the MCO grievance and appeal process and not resolved at that level must next be taken to judicial appeal in the state district court at the appellant's expense.] [RESERVED]~~

[8.306.12.9 NMAC - N, 7-1-05; Repealed, 6-1-08]

**8.306.12.10 GENERAL REQUIREMENTS FOR GRIEVANCE AND APPEALS:**

A. The MCO shall have a grievance system in place for members that includes a grievance process related to dissatisfaction, and an appeals process related to an MCO action, including the opportunity to request an HSD fair hearing.

B. A fair hearing may be requested only after the MCO grievance/appeal process has been exhausted. Issues of late premium payment or failure to pay the premium addressed through the MCO grievance and appeal process and not resolved at that level must next be taken to judicial appeal in the state district court at the appellant's expense.

[A.] C. The MCO shall implement written policies and procedures describing how the member may register a grievance or an appeal with the MCO or register a request for a fair hearing with HSD. The policy should include a description of how the MCO resolves the grievance or appeal.

[B.] D. The MCO shall provide to all service providers in the MCO's network a written description of the MCO's grievance and appeal process and how the provider can submit a grievance ~~and/or~~ or appeal.

[C.] E. The MCO shall have available reasonable assistance in completing forms and taking other procedural steps. This includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.

[D.] F. The MCO shall name a specific individual(s) designated as the MCO's medicaid member grievance or appeal coordinator with the authority to administer the policies and procedures for resolution of a grievance ~~and/or~~ or an appeal, to review patterns/trends in grievances ~~and/or~~ or appeals, and to initiate corrective action.

[E.] G. The MCO shall ensure that the individuals who make decisions on

grievances ~~and/or~~ or appeals are not involved in any previous level of review or decision making. The MCO shall also ensure that health care professionals with appropriate clinical expertise will make decisions for the following:

(1) an appeal of an MCO denial that is based on lack of medical necessity;

(2) an MCO denial that is upheld in an expedited resolution;

(3) a grievance or appeal that involves clinical issues.

~~F.~~ H. Upon enrollment, the MCO shall provide members, at no cost, with a member information sheet or handbook that provides information on how they ~~and/or~~ or their representative(s) can file a grievance ~~and/or~~ or an appeal, and the resolution process. The member information shall also advise members of their right to file a request for an administrative hearing with the HSD hearings bureau following an appeal of the MCO action. The information shall meet the standards for communication specified in 8.305.8.15 NMAC.

~~G.~~ I. The MCO must ensure that punitive or retaliatory action is not taken against a member or a provider that files a grievance ~~and/or~~ or an appeal, or a provider that supports a member's grievance ~~and/or~~ or appeal.

[8.306.12.10 NMAC - N, 7-1-05; A, 6-1-08]

**8.306.12.11 GRIEVANCE:** A grievance is ~~a member's~~ an expression of dissatisfaction about any matter or aspect of the MCO or its operation other than an MCO action.

A. A member may file a grievance either orally or in writing with the MCO within 90 calendar days of the date of the event causing the dissatisfaction ~~occurred~~. The legal guardian of the member for incapacitated adults, a representative of the member as designated in writing to the MCO, and a provider acting on behalf of the member and with the member's written consent, have the right to file a grievance on behalf of the member.

B. Within five (5) working days of receipt of the grievance, the MCO shall provide the grievant with written notice that the grievance has been received and the expected date of its resolution.

C. The investigation and final MCO resolution process for grievances shall be completed within thirty (30) calendar days of the date the grievance is received by the MCO and shall include a resolution letter to the grievant.

D. The MCO may request an extension from HSD of up to fourteen (14) calendar days if the member requests the extension, or if the MCO demonstrates to HSD that there is need for additional information, and the extension is in the member's interest. For any extension not

requested by the member, the MCO shall give the member written notice of the reason for the extension within two (2) working days of the decision to extend the timeframe.

E. Upon resolution of the grievance, the MCO shall mail a resolution letter to the member. The resolution letter must include, but not be limited to, the following:

(1) all information considered in investigating the grievance;

(2) findings and conclusions based on the investigation; and

(3) the disposition of the grievance.

[8.306.12.11 NMAC - N, 7-1-05; A, 6-1-08]

**8.306.12.12 APPEALS:** An appeal is a request for review by the MCO of an MCO action.

A. Action is defined as:

(1) the denial or limited authorization of a requested service, including the type or level of service;

(2) the reduction, suspension, or termination of a previously authorized service;

(3) the denial, in whole or in part, of payment for a service;

(4) the failure of the MCO to provide services in a timely manner, as defined by HSD; or

(5) the failure of the MCO to complete the authorization request in a timely manner as defined in 42 CFR Section 438.408.

**B. Notice of MCO**

**action:** The MCO shall mail a notice of action to the member ~~and/or~~ or provider within 10 days of the date of an action ~~except for denial~~ for previously authorized services as permitted under 42 CFR 431.213 and 431.214 and within 14 days of the action for newly requested services. Denials of claims which may result in member financial liability ~~which requires~~ require immediate notification. The notice must contain but not be limited to the following:

(1) the action the MCO has taken or intends to take;

(2) the reasons for the action;

(3) the member's or the provider's right, as applicable, to file an appeal of the MCO action through the MCO;

(4) the member's right to request an HSD fair hearing and what the process would be;

(5) the procedures for exercising the rights specified;

(6) the circumstances under which expedited resolution of an appeal is available and how to request it; and

(7) the member's right to have benefits continue pending resolution of an

appeal or fair hearing, how to request the continuation of benefits, and the circumstances under which the member may be required to pay the costs of continuing these benefits.

C. A member may file an appeal of an MCO action within 90 calendar days of receiving the MCO's notice of action. The legal guardian of the member for incapacitated adults, a representative of the member as designated in writing to the MCO, or a provider acting on behalf of the member with the member's written consent, have the right to file an appeal of an action on behalf of the member. The MCO/SE shall consider the member, representative or estate representative of a deceased member as parties to the appeal.

D. The MCO has 30 calendar days from the date the oral or written appeal is received by the MCO to resolve the appeal. The MCO shall appoint at least one person to review the appeal who was not involved in the initial decision and who is not the subordinate of any person involved in the initial decision.

E. The MCO shall have a process in place that assures that an oral inquiry from a member seeking to appeal an action is treated as an appeal (to establish the earliest possible filing date for the appeal). An oral appeal must be followed by a written appeal within 10 calendar days that is signed by the member. The MCO will make best efforts to assist members as needed with the written appeal.

F. Within five working days of receipt of the appeal, the MCO shall provide the grievant with written notice that the appeal has been received and the expected date of its resolution. The MCO shall confirm in writing receipt of oral appeals, unless the member or the provider requests an expedited resolution.

G. The MCO may extend the 30 day timeframe by 14 calendar days if the member requests the extension, or the MCO demonstrates to HSD that there is need for additional information, and the extension is in the member's interest. For any extension not requested by the member, the MCO must give the member written notice of the extension and the reason for the extension within two working days of the decision to extend the timeframe.

H. The MCO shall provide the member ~~and/or~~ or the member's representative a reasonable opportunity to present evidence, and allegations of the fact or law, in person as well as in writing.

I. The MCO shall provide the member ~~and/or~~ or the representative the opportunity, before and during the appeals process, to examine the member's case file, including medical or clinical records, and any other documents and records considered during the appeals



process. The MCO shall include as parties to the appeal the member and his or her representative, or the legal representative of a deceased member's estate.

J. For all appeals, the MCO shall provide written notice within the 30-calendar day timeframe of the appeal resolution to the member or the provider, if the provider filed the appeal.

(1) The written notice of the appeal resolution must include, but not be limited to, the following information:

(a) the result(s) of the appeal resolution; and

(b) the date it was completed.

(2) The written notice of the appeal resolution for appeals not resolved wholly in favor of the member must include, but not be limited to, the following information:

(a) the right to request an HSD fair hearing and how to do so;

(b) the right to request receipt of benefits while the hearing is pending, and how to make the request; and

(c) that the member may be held liable for the cost of those benefits if the hearing decision upholds the MCO's action.

K. The MCO may continue benefits while the appeal ~~and/or~~ or the HSD fair hearing process is pending.

(1) The MCO must continue the member's benefits if all of the following are met:

(a) the member or the provider files a timely appeal of the MCO/SE action ~~and/or~~ or asks for a fair hearing within 13 days from the date on the MCO/SE notice of action;

(b) the appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(c) the services were ordered by an authorized provider;

(d) the time period covered by the original authorization has not expired; and

(e) the member requests extension of the benefits.

(2) The MCO shall provide benefits until one of the following occurs:

(a) the member withdraws the appeal;

(b) ~~ten~~ 13 days have passed since the date of the ~~[MCO mailed the]~~ resolution letter, ~~[providing]~~ provided the resolution of the appeal was against the member and the member has taken no further action;

(c) HSD issues a hearing decision adverse to the member; and

(d) the time period or service limits of a previously authorized service has expired.

(3) If the final resolution of the appeal is adverse to the member, that is, the ~~[MCO's/SE's]~~ MCO's action is upheld, the MCO may recover the cost of the services furnished to the member while the appeal

was pending to the extent that services were furnished solely because of the requirements of this section, and in accordance with the policy in 42 CFR Section 431.230(b).

(4) If the MCO or HSD reverses a decision to deny, limit, or delay services, and these services were not furnished while the appeal was pending, the MCO must authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires.

(5) If the MCO or HSD reverses a decision to deny, limit or delay services and the member received the disputed services while the appeal was pending, the MCO must pay for these services.

(6) If HSD reverses a decision to deny eligibility, the potential member can enroll with the MCO, but there will be no retroactive enrollment or benefit coverage under such circumstances.

[8.306.12.12 NMAC - N, 7-1-05; A, 4-16-07; A, 6-1-08]

**8.306.12.13 EXPEDITED RESOLUTION OF APPEALS:** An expedited resolution of an appeal is an expedited review by the MCO of an MCO action.

A. The MCO shall establish and maintain an expedited review process for appeals when the MCO determines that taking the time for a standard resolution could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function. Such a determination is based on:

(1) a request from the member;

(2) a provider's support of the member's request;

(3) a provider's request on behalf of the member; or

(4) the MCO's independent determination.

B. The MCO shall ensure that the expedited review process is convenient and efficient for the member.

C. The MCO shall resolve the appeal within three working days of receipt of the request for an expedited appeal, if the request meets the definition of expedited. In addition to written resolution notice, the MCO/SE shall also make reasonable efforts to provide and document oral notice.

D. The MCO may extend the timeframe by up to 14 calendar days if the member requests the extension, or the MCO demonstrates to HSD that there is need for additional information and the extension is in the member's interest. For any extension not requested by the member, the MCO shall give the member written notice of the reason for the delay.

E. The MCO shall ensure that punitive action is not taken against a member or a provider who requests an

expedited resolution or supports a member's expedited appeal.

F. The MCO shall provide expedited resolution if the request meets the definition of an expedited appeal in response to an oral or written request from the member or provider on behalf of the member.

G. The MCO shall inform the member of the limited time available to present evidence and allegations in fact or law.

H. If the MCO denies a request for an expedited resolution of an appeal, it shall:

(1) transfer the appeal to the 30 day timeframe for standard resolution, in which the 30-day period begins on the date the MCO received the request; and

(2) make reasonable efforts to give the member prompt oral notice of the denial, and follow up with a written notice within two calendar days; ~~and~~

~~(3) inform the member in the written notice of the right to file an appeal and/or request an HSD fair hearing if the member is dissatisfied with the MCO's decision to deny an expedited resolution].~~

I. The MCO shall document in writing all oral requests for expedited resolution and shall maintain the documentation in the case file.

[8.306.12.13 NMAC - N, 7-1-05; A, 4-16-07; A, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.13 NMAC, section 10, effective June 1, 2008.

### 8.306.13.10 MANAGED CARE ORGANIZATION REQUIREMENTS:

The MCO shall have in place internal controls and policies and procedures that are capable of preventing, detecting, investigating and reporting potential fraud and abuse activities concerning both providers and/or members. The MCO specific internal controls and policies and procedures shall be described in a comprehensive written plan submitted to HSD or its designee for approval. Substantive amendments or modifications to the policies and procedures shall be approved by HSD, ~~[or its designee. At a minimum, the written plan shall include]~~ The MCO shall maintain procedures for reporting potential and actual fraud and abuse by clients or providers to HSD. The MCO shall:

A. have internal procedures that facilitate preliminary investigating and reporting of potential and actual fraud and abuse to HSD or its designee for further investigation;

B. ~~[a description of the]~~

have specific controls in place for prevention and detection of potential cases of fraud and abuse such as: claims edits, post processing review of claims, provider ~~[profiling]~~ profiling/exception reporting and credentialing; prior authorizations, utilization /quality management monitoring;

C. have a mechanism to work with HSD or its designee to further develop prevention and detection mechanisms and best practices and to monitor outcomes for SCI;

D. have internal procedures to prevent, detect and investigate program violations to ~~[help]~~ recover funds mis-spent due to fraudulent or abusive actions; ~~and~~

E. ~~[the requirements to]~~ report to HSD the names of all providers identified with aberrant utilization according to provider profiles, regardless of the cause of aberrancy[-];

F. designate a compliance officer and a compliance committee who are accountable to senior management; and

G. provide effective fraud and abuse detection training, administrative remedies for false claims and statements and whistleblower protection under such laws to the MCO's employees that include:

(1) written policies for all employees, agents or contractors that provide detailed information regarding the New Mexico Medicaid False Claims Act, NMSA 1978, and the federal False Claims Act established under sections 3729 through 3733 of Title 31, United States Code, administrative remedies for false claims and statements established under Chapter 38 of Title 31, United States Code, including but not limited to, preventing and detecting fraud, waste and abuse in federal health care programs (as defined in section 1128B (f) of the Social Security Act);

(2) as part of such written policies, detailed provision regarding the MCO's policies and procedures for detecting and preventing fraud, waste and abuse; and

(3) in any employee handbook, a specific discussion of the laws described in Paragraph (1) above, the rights of employees to be protected as whistleblowers, and the contractor's of subcontractor's policies and procedures for detecting and preventing fraud, waste and abuse;

H. implement effective lines of communication between the compliance officer and the MCO's employees;

I. require enforcement of standards through well-publicized disciplinary guidelines; and

J. have a provision for prompt response to detected offenses and for development of corrective action initiatives relating to the MCO's contract.

[8.306.13.10 NMAC - N, 7-1-05; A, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.15 NMAC, sections 9 and 10, effective June 1, 2008.

### 8.306.15.9 SERVICES FOR SCI MEMBERS WITH SPECIAL HEALTH CARE NEEDS (SCI-SHCN):

A. SCI-SHCN require a broad range of primary, specialized medical, behavioral health and related services. SCI-SHCN are individuals who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition, or low to severe functional limitation and who also require health and related services of a type or amount beyond that required by other individuals. SCI-SHCN have ongoing health conditions, high or complex service utilization, and low to severe functional limitations. The primary purpose of the definition is to identify these individuals so that the MCO can facilitate access to appropriate services. The definition also allows for flexible targeting of individuals based on clinical justification and discontinuing targeted efforts when such efforts are no longer needed.

B. **Identification of enrolled SCI-SHCN:** The MCO shall have written policies and procedures in place with HSD approval, which govern how members with multiple and complex physical and behavioral health care needs shall be identified. The MCOs shall have an internal operational process, in accordance with policy and procedure, to target members for the purpose of applying stratification criteria to identify SCI-SHCNs. The MCO shall employ reasonable effort to identify SCI-SHCNs based at least on the following criteria:

(1) individuals eligible for SSI;

(2) individuals identified by service utilization, clinical assessment, or diagnosis; and

(3) referral by family or a public or community program

[8.306.15.9 NMAC - N, 7-1-05; A, 6-1-08]

### 8.306.15.10 SCI ENROLLMENT FOR SCI-SHCN:

A. **Switch enrollment:** The MCO shall have policies and procedures to facilitate a smooth transition of a member who switches enrollment to another MCO. See Subsection E of 8.306.5.9 NMAC, member switch enrollment. Individual members (not enrolled in an employer group), including SCI-SHCN, may request to break a lock-in and be switched to membership in another MCO, based on cause. The member, the member's

family or legal guardian shall contact HSD to request that the member be switched to another MCO. ~~[The MCO shall have policies and procedures to facilitate a smooth transition of a member who switches enrollment to another MCO. See Subsection E of 8.306.5.9 NMAC, Member Switch Enrollment.]~~

### B. SCI-SHCN information and education:

(1) The MCO shall develop and distribute to SCI-SHCN members, caregivers, parents and/or legal guardians, as appropriate, information and materials specific to the needs of this population. This includes information, such as items and services that are provided or not provided by the SCI program, information about how to arrange transportation, and which services require a referral from the PCP. The individual, family, caregiver, or legal guardian shall be informed on how to present an individual for care in an emergency room that is unfamiliar with the individual's special health care needs and about the availability of care coordination. See 8.306.9 NMAC, *Coordination Of Benefits*. This information may be included either in a special member handbook or in a SCI-SHCN insert to the MCO member handbook.

(2) The MCO shall provide health education information to assist a SCI-SHCN and/or caregivers in understanding how to cope with the day-to-day stress caused by chronic illness, including chronic behavioral health conditions.

(3) The MCO shall provide SCI-SHCNs ~~and/or~~ or caregivers a list of key MCO resource people and their telephone numbers. The MCO shall designate a single point of contact that a SCI-SHCN, family member, caregiver, or provider may call for information.

[8.306.15.10 NMAC - N, 7-1-05; A, 6-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.16 NMAC, section 9, effective June 1, 2008. The part name is also amended.

### PART 16 ~~[CLIENT]~~ MEMBER TRANSITION OF CARE

#### 8.306.16.9 ~~[CLIENT]~~ MEMBER TRANSITION OF CARE:

The MCO shall have the resources and policies and procedures in place to ensure continuity of care without disruption in service to members and to assure the service provider of payment. The MCO shall actively assist with transition of care issues. During the individual member's SCI recertification of eligibility period and re-enrollment, the member may switch enrollment to a differ-

ent MCO. Employer groups may also switch MCOs during the group re-enrollment process. Certain members may lose their SCI eligibility while enrolled in an MCO. A member changing from one MCO to another SCI MCO shall continue to receive medically necessary services in an uninterrupted manner. ~~[The MCO shall have the resources and policies and procedures in place to ensure continuity of care without disruption in service to members and to assure the service provider of payment.]~~

**A. Member transition:**

The MCO shall have policies and procedures that address member identification and the clinical transition and transfer of members into or out of the MCO, including the CLTS program.

(1) The MCO shall have policies and procedures that cover potentially large or mass transfer of members into or out of the MCO, including the identification of members currently receiving services.

(2) The MCO shall have policies and procedures covering the transition into the MCO of an individual member, which shall include member education about the MCO and the review and update of existing treatment plans.

(3) The MCO shall have policies and procedures that identify members transferring out of the MCO and ensure the provision of member data and clinical information to the future MCO necessary to avoid delays in member treatment.

**B. Special payment requirement.** The MCO shall be responsible for payment of covered medical services, provided to the member for any month the MCO receives a capitation payment, even if the member has lost SCI eligibility.

**C.** Tracking of members who are nearing the annual claims benefit maximum or annual bed-day maximum.

(1) MCOs will track dollars paid for claims and hospital inpatient days (including home care days) for each SCI member and identify individuals who are at ~~[85%]~~ 50 percent of claims benefits paid out in a benefit year and those who have utilized 80% of their available hospital inpatient resources.

(2) Identified members who are at the ~~[85%]~~ 50 percent level of claims payments or at 80% of hospital days available will have all care coordinated by the MCO to identify methods to manage care so as to best utilize the remaining dollars and days to maximize care and prevent member from reaching benefit claims and/or hospital day maximum.

(3) MCO will provide information on these individuals to HSD who will work in conjunction with the MCO to find alternative health care options for these

individuals.

**D. Claims processing and payment:** In the event that an MCO's contract with HSD has ended, is not renewed or is terminated, the CONTRACTOR shall remain responsible for processing and paying claims for services delivered through the contract period, but submitted after the MCO's contract has ended.

(1) The MCO shall be required to inform providers in writing, at least 30 days prior to the end of the contract, of the termination of the contract and of the process for providers to submit claims for services provided through the contract end date. The letter shall include the telephone, fax numbers, and the billing address for claims submissions as well as the names of persons to contact with questions.

(2) The MCO shall allow six months to process claims for services provided prior to the contract termination date.

(3) The MCO shall continue to meet timeframes established for processing all claims.  
[8.306.16.9 NMAC - N, 7-1-05; A, 6-1-08]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.1 NMAC, Sections 2, 3, 7 through 12 and 14, effective June 15, 2008.

**16.44.1.2 SCOPE:** This part applies to the board, licensees, certificate holders, applicants ~~[for licensure]~~ and the general public.

[11-10-97; 16.44.1.2 NMAC - Rn, 16 NMAC 44.1.2, 10-05-02; A, 06-15-08]

**16.44.1.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape ~~[Architect]~~ Architects Act, NMSA 1978 Sections 61-24-B1, 61-24-B3, 61-24-B6, 61-24-B7, 61-24-B10.

[11-10-97; 16.44.1.3 NMAC - Rn, 16 NMAC 44.1.3, 10-05-02; A, 06-15-08]

**16.44.1.7 DEFINITIONS:** As used in these regulations, the following words and phrases have the following meanings unless the context or intent clearly indicates a different meaning.

**A.** "Accredited" means accreditation by the landscape architectural accreditation board (LAAB) or a recognized equivalent accrediting agency.

~~[A.]~~ **B.** "Act" means the Landscape Architects Act, ~~[Section]~~ Sections 61-24B-1 through 61-24B-17NMSA 1978.

~~[B.]~~ **C.** "Administrator" "board administrator" or "program manager" means the staff person assigned certain

express or implied executive and administrative functions of the board as defined by board regulation or as required to carry out the provisions of the act.

~~[C.]~~ **D.** "Applicant" means a person who has completed all educational requirements for licensure or certification and has filed an initial application with the board.

**E.** "Board" means the New Mexico board of landscape architects.

~~[D.]~~ **F.** "Board regulation" or "regulation" ~~[or]~~ means any part adopted by the board pursuant to authority under the act and includes any superceding regulation. "Rule" means board regulation.

~~[E.]~~ **G.** "Candidate" means a person who has filed with the board a ~~[properly made application]~~ completed form for licensure or certification that is complete in all particulars and appears on the face to satisfy all minimum educational, supervision, payment and other requirements except examination requirements as required by the act and these regulations and is eligible to take the L.A.R.E. ~~[examination].~~

**H.** "Certificate holder" or "certification" means an individual certified under the Landscape Architects Act as a landscape architect in training.

~~[F.]~~ **I.** "CLARB" means the council of landscape architect ~~[regulatory]~~ registration boards or its successor.

~~[G.]~~ **J.** "CLARB [certificate] certification" means certification by CLARB that a landscape architect has met the minimum standards of education, examination, experience and professional conduct established by the council and is thereby recommended for licensure in all member jurisdictions.

~~[H.]~~ **K.** "CLARB council record" means the verified documentation of an individual's education, experience, examination, licensure and professional conduct ~~[compiled]~~ compiled by CLARB.

~~[I.]~~ **L.** "Client" means a person or corporate entity that is the recipient of landscape architectural services.

~~[J.]~~ **M.** "Consultant" means a licensed landscape architect who provides professional advice or opinion to a licensee and who has no professional relationship with the client, has no authority over the project or has no responsibility for the services performed ~~[on the welfare of]~~ for the client.

**N.** "Continuing professional education" (CPE) means a board requirement of continuing education, instruction or participation as a condition of renewal of licensure.

~~[K.]~~ **O.** "Custodian" means board administrator.

~~[L.]~~ **P.** "Electronic transmission" means the sending of information

through the internet or by telephone facsimile (FAX) or E-mail.

~~[M-]~~ Q. "Filed with the board" means actual receipt during normal business hours at the board office in Santa Fe, New Mexico.

R. "General administration of a construction contract" means the interpretation of drawings and specifications, the establishment of standards of acceptable workmanship and the periodic observation of construction to facilitate consistency with the general intent of the construction documents.

~~[N-]~~ S. "Good cause" means the inability to comply because of illness, undue hardship, or extenuating circumstances that are not willful and are beyond the control of the person asserting good cause. Those asserting good cause shall have the burden to demonstrate good cause.

~~[O-]~~ T. "Inactive status" means a procedure of the board to affirm that a licensee is not engaged in active practice.

~~[P-]~~ U. "Initial application" means the initial application for licensure or certification filed with the board by an applicant ~~[not]~~ not previously or currently licensed in a jurisdiction.

~~[Q-]~~ V. "Joint practice committee" (JPC) means a committee statutorily comprised of two architects, two landscape architects and two engineers or land surveyors and a public member.

W. "Landscape architect" or "registered landscape architect" (RLA) means an individual registered under the Landscape Architects Act to practice landscape architecture.

X. "Landscape architect in training" (LAIT) means an individual certified under the Landscape Architects Act who is actively pursuing completion of the requirements for licensure pursuant to that act, under direct supervision of a registered landscape architect.

Y. "Landscape architecture" means the art, profession or science of designing land improvements, including consultation, investigation, research, design, preparation of drawings and specifications and general administration of contracts to protect the health, safety and welfare of the public. Nothing contained in this definition shall be construed as authorizing a landscape architect to engage in the practice of architecture, engineering or land surveying as defined by Chapter 61, Articles 15 and 23 NMSA 1978.

~~[R-]~~ Z. "Landscape architect registration examination" (L.A.R.E.) means the national examination promulgated by CLARB.

~~[S-]~~ AA. "Licensee" means a person licensed pursuant to the provisions of the act and board regulations.

~~[T-]~~ BB. "Licensee in good

standing" means a licensee who is not the subject of a pending investigation, adjudicatory proceeding, or petition on appeal or review, or whose license is not restricted, suspended, or revoked in New Mexico or any other state or licensing jurisdiction.

~~[U-]~~ CC. "Licensed" means licensed ~~[or certified]~~, registered or any other term when such terms ~~[identifies]~~ identify a person whose professional behavior is subject to regulation by the board.

~~[V-]~~ DD. "Practical experience" means experience ~~[, which]~~ that demonstrates an essential understanding of the practice of landscape architecture pursuant to the act. Practical experience shall begin after graduation from a degree program as set forth in the act.

~~[W-]~~ EE. "Professional continuing education" means a board requirement of continuing education, instruction or participation as a condition of renewal of licensure.

~~[X-]~~ FF. "Professional relationship" means a mutually agreed-upon relationship between a landscape architect and a client for the purpose of the client(s) obtaining the landscape architect's professional services.

~~[Y-]~~ GG. "Professional services" means all actions of the landscape architect in the context of professional relationship with the client.

~~[Z-]~~ HH. "Properly made application" means a completed form for a landscape architect license filed with the board that is complete in all particulars and appears on the face to satisfy all minimum age, educational, supervision, payment and other requirements except examination requirements for license as required by the Act and these regulations.

GG. "Registrant," "registered" or "registration" means an individual registered under the Landscape Architects Act as a landscape architect.

~~[AA-]~~ HH. "Related field" means a field having an impact on or affecting the field of landscape architecture including but not limited to such fields as architecture~~;~~ or engineering.

~~[BB-]~~ II. "Renewal cycle/period" means the time during which a licensee or certificate holder renews his/her license.

~~[CC-]~~ JJ. "Sponsor" means an individual, organization, association, institution or other entity that provides education activity for the purpose of fulfilling the continuing education requirements ~~[for the administrative regulation]~~.

~~[EE-]~~ KK. "Supervisee" means any person who functions under the authority of a ~~[licensed]~~ registered landscape architect to provide landscape architectural services as provided in the act or board ~~[regulation]~~ regulations.

~~[DD-]~~ LL. "Supervisor"

means a ~~[licensed]~~ registered landscape architect who agrees to provide adequate supervision over a student, applicant, employee or staff or other non-licensed person and who remains ultimately responsible for the professional conduct of the non-licensed person and the welfare of the client.

[16.44.1.7 NMAC - N, 10-05-02; A, 06-15-08]

#### 16.44.1.8 BOARD MEMBERSHIP:

A. Board members: The board of landscape architects consists of five (5) members appointed by the governor who are residents of New Mexico and serve for three-year staggered terms. The landscape architect members shall have been registered as landscape architects for at least (5) five years.

B. The members shall be appointed as follows:

(1) Three shall be professional members who are ~~[licensed]~~ registered under the Landscape Architects Act as landscape architects. The governor shall appoint the professional members from a list of names nominated by the New Mexico chapter of the American society of landscape architects.

(2) Two members shall be public members who are laymen and have no significant financial interest, direct or indirect, in the practice of landscape architecture.

C. Expiration dates: Each member shall hold office until the expiration of his or her appointed term or until a successor is duly appointed. When the term of each member ends, the governor shall appoint the member's successor for a term of three (3) years. Any vacancy occurring in the board membership other than by expiration of term shall be filled by the governor by appointment for the un-expired term of the member. The governor may remove any board member for misconduct, incompetence, or neglect of duty.

[11-10-97, 16.44.1.8 NMAC - Rn, 16 NMAC 44.1.9, 10-05-02; A, 06-15-08]

#### 16.44.1.9 BOARD OPERATIONS:

A. Elections. At its annual meeting in July, the board shall elect a chair, vice chair, and secretary-treasurer.

B. All board officers shall exercise authority subject to the act, board regulations, and specific directions of the board. Duties of the board chair, vice chair, and secretary-treasurer are as follows:

(1) The board chair shall preside at board meetings and adjudicatory hearings unless another presiding officer is named by the board.

(2) At the direction of the board, the board chair shall respond to inquiries

and correspondence, execute orders of the board in any pending adjudicatory proceeding unless a hearing officer is appointed, sign decisions of the board unless the board designates another member to sign, appoint board members to formal committees, and provide direction to the board administrator on routine matters to facilitate the efficient operation of board functions between meetings.

(3) The vice chair shall preside at board meetings and adjudicatory hearings in the absence of the chair. If the office of chair becomes vacant, the vice chair shall serve as chair until a new chair is elected.

(4) The secretary-treasurer shall preside at board meetings and adjudicatory proceedings in the absence of the chair and vice chair.

C. Vacancy. If the office of board chair becomes vacant, the board shall elect a chair at the next meeting or any subsequent meeting. If the office of vice chair or secretary-treasurer becomes vacant, the board may hold elections as it deems necessary and advisable.

D. Duties of the board administrator. The board administrator shall at all times perform assigned duties subject to the act, the Uniform Licensing Act, ~~Section~~ Sections 61-1-1 through 61-1-33 NMSA 1978, board rules and regulations, and the specific direction of the board. The board administrator shall perform duties as specified in these rules and regulations, shall supervise other personnel, and shall ensure the responsiveness and efficiency of the functions of the board.

E. Board office. The board office is located in Santa Fe, New Mexico.

F. Board meetings. The board shall conduct meetings in accordance with New Mexico Open Meetings Act, ~~Section~~ Sections 10-15-1 through 10-15-4 NMSA 1978.

(1) The board shall hold an annual meeting in July and shall hold other meetings as it deems necessary and advisable.

(2) The board shall conduct its meetings in an orderly fashion, with due regard for each board member and the public. The board may refer to Robert's Rules of Order, Revised, when necessary and advisable. The board administrator shall prepare the meeting agenda in accordance with the New Mexico Open Meetings Act and board resolution. The board may change the order of agenda items during its meeting. The board shall transact official business only at a legally constituted meeting with a quorum present. The board is not bound in any way by any opinion, statement, or action of any board member(s), the board administrator, or other staff except when the action is pursuant to a lawful instruction or direction of the board. Except

for proceedings to adopt, amend, or repeal regulations governed by Section 61-1-29 NMSA 1978, the board, in its sole discretion, may provide a reasonable opportunity for persons attending an open meeting to address the board on an agenda item. The request to speak shall be timely made and shall not cause delay or disruption of the board's meeting. Except for conferences for the purpose of settlement or simplification of the issues, no person shall be permitted to address the board on any pending or concluded application, complaint, investigation, adjudicatory proceeding, or matter in litigation. Any public comment to the board shall be brief, concise, and relevant to the agenda item. The board may limit the total time allotted for comments and the time allotted to any person. Pursuant to Section 10-15-1 (C) NMSA 1978, a board member may participate in a meeting of the board by means of a conference telephone or other similar communications equipment when it is otherwise difficult or impossible for the member to attend the meeting in person.

(3) Any board member who cannot be impartial in the determination of any matter before the board and cannot judge a particular matter or controversy fairly on the basis of its own merits shall not participate in any board deliberation or vote on the matter. Any board member with a personal, social, family, financial, business, or pecuniary interest in a matter shall voluntarily recuse himself or herself and shall not participate in a hearing, consideration, deliberation, or vote on the matter, except as provided by law. Board members shall not disclose to any non-member the content of any executive session discussion or deliberation, or any other confidential matters that may be the subject of an executive session or attorney-client privileged communications except as ordered by a court of competent jurisdiction or where the board knowingly and intentionally permits disclosure. Nothing herein shall preclude the board from including in executive session discussions or confidential committee meetings the board administrator or other persons the board deems necessary to assist the board in carrying out the functions of the board.

(4) License and certificate [registration] roster. The board will maintain a current roster of persons holding licenses and certificates [of registration to practice landscape architecture] in the state of New Mexico. Copies may be made available at a charge determined by the board.

[11-10-97, 16.44.1.9 NMAC - Rn & A, 16 NMAC 44.1.9 & 16NMAC 44.1.10, 10-05-02; A, 06-15-08]

**16.44.1.10 BOARD RECORDS:**  
A. Public records shall be

available for inspection in accordance with the provisions of the Inspection of Public Records Act, ~~Section~~ Sections 14-2-1 through 14-2-12 NMSA 1978 [~~and Section 61-9-5.1 NMSA 1978~~].

B. The custodian shall charge [~~25 per page~~] for copying [~~normal~~] 8 ½" by 11" paper (16.44.8.8 NMAC). The custodian may charge [~~up to \$1.00~~] an additional fee for copying undersize or oversize documents or papers. The board shall not be required to create any document or compile data for an individual or private entity. Consistent with the Inspection of Public Records Act and taking into account the available staff, space, and the needs of other legitimate public business, the custodian may determine the reasonable time, place, and conditions for access to public records. Public records shall not be removed from the board office except by board members, board staff, or agents of the board for official public business.

[11-10-97; 16.44.1.10 NMAC - Rn, 16NMAC 44.1.10, 10-05-02; 16.44.1.10 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.1.11 SEAL:**

A. The official seal of the board shall be as follows: an embossed circular seal two inches in diameter, consisting of two concentric circles. The annular space between the two circles shall contain the seal of the state of New Mexico.

B. The board may also authorize a [~~seal~~] seal/stamp for use by registered landscape architects. Said [~~seal~~] seal/stamp will bear the registrant's name and registration number and the legend "registered landscape architect state of New Mexico." All plans, specifications, and reports issued by a registrant shall [~~place his signature across the seal~~] have the registrant's signature placed across the seal/stamp.

[11-10-97; 16.44.1.11 NMAC - Rn, 16NMAC 44.1.9.7.1, 10-05-02; A, 06-15-08]

**16.44.1.12 [YELLOW PAGE] ADVERTISEMENT:** In accordance with the [~~Professional Licensing Act of Architects, Surveyors, Engineers and Landscape Architects~~] joint practice committee of the state of New Mexico, the following procedure shall apply to advertising:

A. When individuals representing other disciplines, professions, or skills are listed they must be identified by the particular skill area.

B. When advertising in a discipline area there must be a New Mexico registrant in that field who can legally bind by contract the company, corporation or business.

C. If only registrants within the profession or discipline are being list-

ed, no special identification is required.

[16.44.1.12 NMAC - N, 10-05-02; N, 3-17-04; A, 06-15-08]

#### 16.44.1.14 BOARD REGULATION:

~~[Adoption, amendment, or repeal of regulation.]~~ Board regulations may be adopted, amended, repealed, or superseded by rule making proceedings pursuant to applicable provisions of the act, the Uniform Licensing Act, and the State Rules Act.

[16.44.1.14 NMAC - Rn, 16.44.1.12 NMAC, 3-17-04; A, 06-15-08]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.2 NMAC, Sections 2, 3, 6 and 8 through 11, effective June 15, 2008. The part name is also amended.

### PART 2 EDUCATIONAL AND EXAMINATION REQUIREMENTS FOR LICENSURE OR CERTIFICATION

**16.44.2.2 SCOPE:** The provisions in Part 2 apply to applicants for licensure and certification.

[16.44.2.2 NMAC - Rp 16 NMAC 44.2.2, 10-05-02; A, 06-15-08]

#### 16.44.2.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the Landscape ~~[Architect]~~ Architects Act, NMSA 1978 Sections 61-24-B8, 61-24-B11, 61-24-B12, 61-24-B16. [16.44.2.3 NMAC - Rp 16 NMAC 44.2.3, 10-05-02; A, 06-15-08]

**16.44.2.6 OBJECTIVE:** This part ~~[established]~~ establishes the minimum educational and examination requirements for applicants applying for licensure or certification.

[16.44.2.6 NMAC - Rp 16 NMAC 44.2.6, 10-05-02; A, 06-15-08]

#### 16.44.2.8 EDUCATIONAL REQUIREMENTS:

A. Qualifications for registration as a landscape architect. A person desiring to become registered as a landscape architect shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant:

(1) has graduated from an accredited program in landscape architecture at a school, college or university ~~[offering an accredited minimum four-year curriculum and has a minimum of three years of practical experience acceptable to the board.]~~ and has a minimum of two years of practical

experience acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect ~~[A master's degree in landscape architecture from an accredited college or university may be accepted in lieu of one year of practical experience];~~ or

~~[(B-)]~~ (2) has graduated from a non-accredited program of landscape architecture ~~[or a related field]~~ at a school, college or university offering ~~[an accredited]~~ a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of four years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect ~~[: A master's degree from a non-accredited program of landscape architecture or a related field may be accepted in lieu of one year of practical experience.]~~ ; or

(3) has graduated from a program in a field related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum and has a minimum of five years of practical experience acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect; or

(4) has a minimum of ten years of practical experience in landscape architectural work that is acceptable to the board, at least one year of which shall be under the supervision of a registered landscape architect, provided that:

~~[(4)]~~ (a) each satisfactorily completed year of study in an accredited program of landscape architecture ~~[in an accredited school, college or university]~~ may be accepted in lieu of one year of practical experience required under this subsection; or

~~[(2)]~~ (b) a baccalaureate degree from ~~[an accredited]~~ a school, college or university ~~[in a related field]~~ may be accepted in lieu of two years of practical experience required under this subsection ~~[:or]~~

~~[(3)]~~ a master's degree from an accredited school, college or university in a related field may be accepted in lieu of three years of practical experience required under this subsection].

B. Qualifications for certification as a landscape architect in training. A person desiring to be certified as a landscape architect in training shall make application to the board on a written form and in such manner as the board prescribes, pay all required application fees and certify and furnish evidence to the board that the applicant has practical experience in landscape architectural work acceptable to the board and:

(1) has graduated from an accred-

ited program in landscape architecture at a school, college or university; or

(2) has graduated from a non-accredited program of landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum; or

(3) has graduated from a program related to landscape architecture at a school, college or university offering a minimum four-year bachelor's degree curriculum or a minimum two-year master's degree curriculum.

[16.44.2.8 NMAC - Rp 16 NMAC 44.2.8.2, 10-05-02; A, 06-15-08]

#### 16.44.2.9 EXAMINATION:

A. Applicants for ~~[certificates of]~~ registration as a landscape architect shall be required to pass the board's examination for landscape architects.

(1) To qualify for licensure, an applicant must demonstrate professional competence by passing the ~~[landscape architects registration examination]~~ (L.A.R.E.) or ~~[has]~~ have previously passed the uniform national examination (UNE). An applicant who passes the examination may be issued a ~~[certificate of]~~ registration to practice as a landscape architect provided the applicant meets all the current requirements for licensure.

~~[(B-)]~~ (2) The board shall conduct examination of applicants at least once each year. ~~[The examination shall determine the ability of the applicant to use and understand the theory and practice of landscape architecture and may be divided into such subjects as the board deems necessary.]~~

~~[(C-)]~~ (3) The passing score on the ~~[landscape architects registration examination]~~ L.A.R.E. is that score recommended by CLARB. The examination is scored on a pass-fail basis.

~~[(D-)]~~ (4) An applicant who fails to pass the ~~[examination]~~ L.A.R.E. may reapply for the examination if the applicant complies with the rules established by the board in effect at the time of reapplication.

~~[(E-)]~~ (5) An applicant may sit for the L.A.R.E. before or while completing the practical experience/supervision.

B. Applicants for certification as a landscape architect in training shall be required to pass the board's examination for landscape architect in training.

(1) To qualify for certification as a landscape architect in training, an applicant must demonstrate some level of professional competence and demonstrate the applicant's pursuit of a landscape architectural career by passing any two sections of the L.A.R.E.

(2) The board shall conduct examinations of applicants for certification as a landscape architect in training at least

once each year.

(3) The passing score on the L.A.R.E. is that score recommended by CLARB. The examination is scored on a pass-fail basis.

(4) An applicant who passes the examination may be issued a certificate as a landscape architect in training allowing the use of the landscape architect in training designation provided the applicant meets all the current requirements for certification.

(5) An applicant who fails to pass the examination may reapply for the examination if the applicant complies with the rules established by the board in effect at the time of reapplication.

(6) Certification as a landscape architect in training is limited to five (5) years in duration as established by the board.

[16.44.2.9 NMAC - Rp 16 NMAC 44.2.8.3, 10-05-02; A, 06-15-08]

#### 16.44.2.10 L.A.R.E. REVIEWS:

Once an applicant has been notified of the examination results, an applicant who failed may review the examination [if the applicant was not successful in passing the examination]. A standard review and a red-line review are available. CLARB provides this option to the board. An applicant may request a review as follows:

A. A standard review, as established by CLARB, must be requested by September [20<sup>th</sup>] 20 for the previous June L.A.R.E. and March [20<sup>th</sup>] 20 for the previous December L.A.R.E. The fee for the review is set by CLARB. A standard review request received after September [20<sup>th</sup>] 20 for the previous June L.A.R.E. and a request received after March [20<sup>th</sup>] 20 for the previous December L.A.R.E. will be charged according to fees set by CLARB.

B. A red-line review request must be received by September [20<sup>th</sup>] 20 for the previous June L.A.R.E. and March [20<sup>th</sup>] 20 for the previous December L.A.R.E. [Red-line reviews] A red-line review request may take six (6) weeks to fulfill.

C. [Candidates] A candidate choosing the standard review for an examination section may not make an additional request for a red-line review of the same section. Requests for [review of] standard or red-line review must be received in the board office by 5:00 p.m. on the dates listed above, with the appropriate fees.

[16.44.2.10 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.2.11 RECIPROCITY:** The board may issue a [certificate] license to practice as a registered landscape architect without an examination to an applicant who

holds a current [certificate of] registration or license as a landscape architect issued by another state if the standards of the other state are as stringent or higher [as] than those established by [in] the rules and [regulation] regulations and if the [applicants] applicant meets the qualifications required of a registered landscape architect in this state.

[16.44.2.11 NMAC - Rp 16 NMAC 44.2.8.4, 10-05-02; A, 06-15-08]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.3 NMAC, Sections 2, 3, 6, 8 through 17, effective June 15, 2008. The part name is also amended.

### PART 3 REGISTRATION FOR LICENSURE OR CERTIFICATION

**16.44.3.2** The provisions of 16.44.3 NMAC apply to all applicants for licensure or certification.

[16.44.3.2 NMAC - Rp 16 NMAC 44.2.2, 10-05-02; A, 06-15-08]

**16.44.3.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape [Architect] Architects Act, NMSA 1978 Sections 61-24-B4, 61-24-B8, 61-24-B9.

[16.44.3.3 NMAC - Rp 16 NMAC 44.2.3, 10-05-02; A, 06-15-08]

**16.44.3.6 OBJECTIVE:** This part is to establish the minimum requirements for applicants applying for licensure as a landscape architect or certification as a landscape architect in training.

[16.44.3.6 NMAC - Rp 16 NMAC 44.2.6, 10-05-02; A, 06-15-08]

### 16.44.3.8 REGISTRATION OR CERTIFICATION:

A. No person shall practice as a landscape architect [of] nor represent himself [of] or herself as a landscape architect unless he or she has a [certificate of registration] license issued pursuant to the New Mexico Landscape Architects Act and these rules and regulations.

B. No person shall represent himself or herself as a landscape architect in training unless he or she holds a certification issued pursuant to the New Mexico Landscape Architects Act and these rules and regulations.

[B-] C. Application forms and fees: To apply for licensure as a landscape architect or a certificate as a landscape architect in training, the applicant shall submit a completed application on the form provided by the board. The applicant shall

ensure that the application is complete as defined in Subsection F of 16.44.1.7 NMAC and that all fees are paid prior to the deadline specified by the board.

[C-] D. Letters of reference: An applicant for licensure as a landscape architect who is not CLARB certified from any jurisdiction shall submit three letters of reference, two of which shall be from individuals who are not members of the board. The letters of reference shall be from individuals [that] who are not related to the applicant and who are familiar with and will speak to the applicant's professional activities as a landscape architect.

[D-] Related field in the statutory qualifications shall mean a field having an impact on or affecting the field of landscape architecture, including, but not limited to, such fields as architecture, engineering, or planning]

E. Practical experience: [The applicant's practical experience] Practical experience for licensure for an applicant shall begin after graduation from [his/her landscape architect's] his or her school, college or university program as described in Part 2. To assist the board in evaluating the applicant's practical experience, the applicant shall submit evidence of his or her experience with the completed application form in one or both of the following formats:

(1) slides or photographs of projects or drawings depicting construction, planting, irrigation, or design; a minimum of six (6) and a maximum of ten (10) examples of work should be submitted [-(Reduced to 8 1/2 X 11)-] (reduced to 8 1/2" x 11"), or

(2) a maximum two-page summary or abstract [which] that describes other relevant experience, such as administration, research, planning, or teaching.

F. Compliance: The applicant shall comply with the New Mexico Landscape Architects Act and the board's rules and regulations.

[16.44.3.8 NMAC - Rp 16 NMAC 44.2.8.1 & 8.2, 10-05-02; A, 06-15-08]

### 16.44.3.9 APPLICATION AND EXAMINATION FEES:

A. A non-refundable application fee is due at the time of application. The amount of this fee will be determined by the board. The board will collect additional fees, as necessary, incurred by the administration of examinations.

B. [If the applicant is taking the L.A.R.E.,] The applicant will not be scheduled to take the [examination] sections of the L.A.R.E. administered by the board until the initial application is received.

C. Fees and requests to

take the ~~[registration examination]~~ L.A.R.E. shall be due to the board according to the schedules established annually by ~~[the]~~ CLARB. All potential applicants shall be responsible for contacting the board regarding this schedule.

D. Unsuccessful L.A.R.E. ~~[examination]~~ applicants electing to take the examination the next time it is offered will not be obliged to pay an additional application fee; they must, however, pay the applicable examination fees. Unsuccessful applicants electing to take the examination again are required to take only those sections that the applicants failed to pass.  
[16.44.3.9 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.3.10 LANDSCAPE ARCHITECT APPLICANTS NOT PREVIOUSLY LICENSED IN ANY [JURISDICTION] JURISDICTION:**

A. Initial application procedure. To open an initial application file, the candidate shall submit the following:

- (1) a completed and signed application;
- (2) application fee as required by board;
- (3) CLARB council record number (See 16.44.3.11 below);
- (4) L.A.R.E. request form to sit for examination (form provided by board).

B. When the initial application is completed and ~~[is]~~ reviewed by the board administrator and approved by the board, the board office will notify the candidate of approval and will schedule to take the L.A.R.E. ~~[examination]~~

C. ~~[The written examination for licensure is the landscape architects registration examination (L.A.R.E.). The examination is given in June and in December.]~~ A candidate shall be eligible to take the ~~[examination]~~ L.A.R.E. as many times as necessary to pass each section. The initial application file will expire ~~[in]~~ 36 months after application date. If the candidate has not passed all sections of the ~~[examination]~~ L.A.R.E. after 36 months, the candidate will be required to ~~[complete]~~ submit a new application and application fee.

D. All candidates must hold a CLARB council record in order to sit for the L.A.R.E.  
[16.44.3.10 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.3.11 CLARB COUNCIL RECORDS:** The CLARB council record is a verified record of the education, experience and examination history of a landscape architect. The record provides a single, permanent location for all of the documentation required for application for the registration examination or for reciprocal registra-

tion. ~~[Effective September 1, 2003,]~~ All candidates who have made application to take the L.A.R.E. must obtain and hold a CLARB council record. ~~[Please contact CLARB for the requirements, fees and procedures]~~  
[16.44.3.11 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.3.12 LANDSCAPE ARCHITECT APPLICANTS LICENSED IN ANOTHER [JURISDICTION] JURISDICTION, NOT CLARB CERTIFIED:**

A. Initial application procedure. To open an initial application file, the applicant shall submit the following:

- (1) a completed and signed application;
- (2) verification of practical experience;
- (3) the application fee as required by the board;
- (4) official transcripts directly from the institution's office of the ~~[register]~~ registrar;
- (5) three letters of reference; and
- (6) verification of licensure in another jurisdiction.

B. The board office will notify each applicant once the application file is complete. The board will review each application at the next regularly scheduled board meeting.

[16.44.3.12 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.3.13 LANDSCAPE ARCHITECT APPLICANTS WHO ARE CLARB CERTIFIED:**

A. Initial application procedure. To open an initial application file, the applicant shall submit the following:

- (1) a completed and signed application;
- (2) the application fee as required by the board;
- (3) ~~[certified council record]~~ certification received directly from CLARB.

B. Once the application file is complete the board office will notify the applicant. The board ~~[office is authorized to]~~ administrator has been authorized by the board to then issue a license to the applicant.

[16.44.3.13 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.3.14 RECIPROCITY:** The board may issue a ~~[certificate]~~ license to practice as a landscape architect without an examination to an ~~[application]~~ applicant who holds a current ~~[certificate of]~~ registration or license as a landscape architect issued by another state if the education, and experience ~~[requirement]~~ requirements of the other state are as stringent or higher than

those established ~~[by]~~ in the rules and regulations and if the applicant meets the qualifications required of a registered landscape architect in this state.

[16.44.3.14 NMAC - Rp 16 NMAC44.3.8.4, 10-05-02; A, 06-15-08]

**16.44.3.15 PROVISIONS FOR EMERGENCY LICENSURE:**

A. Landscape architects currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be ~~[licensed in]~~ granted an emergency license in New Mexico during a ~~[(4) four months]~~ four-month (4) period following the declared disaster at no cost upon satisfying the following requirements:

- (1) receipt by the ~~[landscape architect]~~ board office of a completed application ~~[which]~~ that has been signed and notarized and accompanied by proof of identity, which may include a copy of a driver's license, passport or other photo identification issued by a governmental entity;

- (2) other required verification may be obtained from the council of landscape architectural registration boards through the CLARB council record;

- (3) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.44.3.8 NMAC;

- (4) sworn affidavit that the applicant was personally ~~[and/or]~~ or professionally affected by the disaster.

B. The board may waive the application fees only.

C. The board may waive the specific forms required under 16.44.3.12 NMAC and 16.44.3.13 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. ~~[Emergency provisional license]~~ The emergency license shall expire on June ~~[30th]~~ 30 following the date of issue. Application for initial license shall be made on or before April ~~[1<sup>st</sup>]~~ 1 following the date of issue of the emergency ~~[provisional]~~ license.

E. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the initial license.  
[16.44.3.15 NMAC - N/E, 11/30/05; A, 06-15-08]

**16.44.3.16 TERMINATION OF EMERGENCY LICENSE:**

A. The emergency license shall terminate upon the following circumstances:

- (1) the issuance of an initial license under section 16.44.2.8 NMAC; or



(2) proof that the emergency license holder has engaged in fraud, deceit, or misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.44.3.16 NMAC - N/E, 11/30/05; A, 06-15-08]

#### **16.44.3.17 EXEMPTIONS**

A. The following shall be exempt from the provisions of the Landscape Architects Act as long as they do not hold themselves out to the public as landscape architects or use the term "landscape architect" without being registered pursuant to the Landscape Architects Act (Chapter 61, Article 24B NMSA 1978):

(1) landscape architects who are not legal residents of or who have no established place of business in this state who are acting as consulting associates of a landscape architect registered under the provisions of the Landscape Architects Act (Chapter 6, Article 24B NMSA 1978), provided that the nonresident landscape architect meets equivalent registration qualifications in his own state or country.

(2) landscape architects acting solely as officers or employees of the United States; and

(3) a person making plans for a landscape associated with a single-family residence or multi-family residential complex of four units or less except when it is part of a larger complex.

B. Nothing in the Landscape Architects Act (Chapter 61, Article 24B NMSA 1978) is intended to limit, interfere with or prevent a professional architect, engineer or land surveyor from engaging in landscape architecture within the limits of his or her licensure.

C. Nothing in the Landscape Architects Act (Chapter 61, Article 24B NMSA 1978) is intended to limit, interfere with or prevent the landscape architects in training, drafters, students, clerks or superintendents and other employees of registered landscape architects from acting under the instructions, control or supervision of the registered landscape architect or to prevent the employment of superintendents on the construction, enlargement or alterations of landscape improvements or any appurtenances thereto or to prevent such superintendents from acting under the immediate personal supervision of registered landscape architects by whom the plans and specifications of any landscape architectural services were prepared.

[16.44.3.17 NMAC - N, 06-15-08]

## **NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS**

This is an amendment to 16.44.4 NMAC, Sections 1, 2, 6 and 8 through 13, effective June 15, 2008. The part name is also amended.

### **PART 4 LICENSE OR CERTIFICATE EXPIRATION AND RENEWAL**

#### **16.44.4.1 ISSUING AGENCY:**

Regulation and Licensing Department, State Board of Landscape Architects, P. O. Box 25101, Santa Fe, NM 87504.

[16.44.4.1 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.4.2 SCOPE:** The provisions of Part 4 apply to ~~all~~ registered landscape architects ~~with a license to practice in New Mexico~~ and certified landscape architects in training.

[16.44.4.2 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.4.6 OBJECTIVE:** This part establishes the procedures for license and certificate expiration and ~~license~~ renewal.

[16.44.4.6 NMAC - N, 10-05-02; A, 06-15-08]

#### **16.44.4.8 LICENSE AND CERTIFICATE RENEWAL:**

A. Each ~~licensee~~ landscape architect shall renew his or her license to practice landscape architecture in New Mexico annually on or before July 1 of the year by remitting to the board office a renewal fee of ~~one hundred seventy five dollars (\$175)}~~ two hundred dollars (\$200.00) with the renewal application form provided by the board. Continuing education hours shall be documented every two (2) years as described in Part 5.

B. Each landscape architect in training shall renew his or her certificate to practice in New Mexico annually on or before July 1 of the year by remitting to the board office a renewal fee of one hundred fifty dollars (\$150.00) with the renewal application form provided by the board.

[16.44.4.8 NMAC - N, 10-05-02; A, 06-15-08]

#### **16.44.4.9 LICENSE AND CERTIFICATE RENEWAL DEADLINE:**

A license or certificate shall be renewed on or before July 1 of each year to be considered current.

[16.44.4.9 NMAC - N, 10-05-02; A, 06-15-08]

#### **16.44.4.10 LICENSE AND CER-**

### **TIFICATE RENEWAL NOTICES:**

Renewal application notices will be mailed to each current licensee or certificate holder at least forty -five (45) days prior to the expiration date of the license.

[16.44.4.10 NMAC - N, 10-05-02; A, 06-15-08]

#### **16.44.4.11 LICENSEE AND CERTIFICATE HOLDER RESPONSIBILITY:**

Renewal application notices will be mailed to the last known address on file with the board. ~~It is the responsibility of the licensee to keep the board informed.~~ The licensee or certificate holder shall inform the board of any changes in address and phone numbers within thirty (30) days of the change. Failure to receive the renewal application notice shall not relieve the licensee or certificate holder of the responsibility of renewing ~~his or her license~~ before the expiration date.

[16.44.4.11 NMAC - N, 10-05-02; A, 06-15-08]

#### **16.44.4.12 LATE RENEWAL AFTER JULY 1:**

A. The board ~~shall~~ may ~~initiate license or certificate suspension proceedings and thereafter shall suspend a license or certificate for failure to renew if the licensee failed to renew his or her license by July 1 of any year.~~

B. A license or certificate suspended for failure to renew may be renewed within a period of ~~two (2) years~~ one (1) year after the suspension upon payment of the renewal fee plus a late fee and proof of continuing education satisfactory to the board when applicable.

C. The license or certificate shall be revoked if ~~the licensee~~ it has not been renewed within one (1) year of the suspension for failure to renew.

D. Any ~~licensee~~ registered landscape architect whose license is revoked for failure to renew shall be required to ~~make a new application and shall~~ apply for reinstatement and must satisfy all requirements for ~~licensure~~ reinstatement in effect at the time the application is filed. Application must be for reinstatement of previous license rather than for a new license.

E. A license that has not been timely renewed will not be suspended or revoked if:

(1) the board is informed in writing, or learns that a licensee is deceased; or

(2) a licensee voluntarily surrenders his or her license by advising the board in writing that he or she no longer wishes to be licensed in New Mexico.

~~E.]~~ F. Unless currently licensed to practice landscape architecture, no person shall:

(1) engage in the practice of landscape architecture; or

(2) use the title or represent himself or herself as a landscape architect, or

(3) use any other title, abbreviation, letters, signs or devices that indicate the person is a landscape architect;

(4) any person who renders or offers to render landscape architecture services while his or her license is suspended or revoked is subject to [disciplinary action] the board's jurisdiction and may face disciplinary action by the board.

G. Unless currently certified as a landscape architect in training, no person shall:

(1) use the title or represent himself or herself as a landscape architect in training; or

(2) use any other title, abbreviation, letters, signs or devices that indicate the person is a landscape architect in training;

(3) any person who renders or offers to render services as a landscape architect in training while he or she is not a certificate holder is subject to the board's jurisdiction and may face disciplinary action by the board.

[F.] H. It is a misdemeanor:

(1) for any person not licensed under the Landscape Architects Act to practice landscape architecture or represent himself or herself as a landscape architect;

(2) for any person to practice landscape architecture during the time that his or her license as a landscape architect or as a landscape architect in training is suspended, revoked, or lapsed.

[16.44.4.12 NMAC - N, 10-05-02; A, 06-15-08]

#### 16.44.4.13 APPROVAL OF RENEWAL APPLICATION:

Upon approval of the licensee's or certificate holder's renewal application, the board will issue a [renewal to the licensee] license or certificate.

[16.44.4.13 NMAC - N, 10-05-02; A, 06-15-08]

### NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.5 NMAC, Sections 2, 3, 8 and 9, effective June 15, 2008.

#### 16.44.5.2 SCOPE:

The provisions of 16.44.5 NMAC apply to all registered landscape architects who are applying to renew their license.

[16.44.5.2 NMAC - Rp 16NMAC 44.5.2, 10-05-02; A, 06-15-08]

#### 16.44.5.3 STATUTORY AUTHORITY:

This part is adopted pursuant

to the Landscape [Architect] Architects Act, NMSA 1978 Sections 61-24B11, 61-24B15.

[16.44.5.3 NMAC - Rp 16NMAC 44.5.3, 10-05-02; A, 06-15-08]

#### 16.44.5.8 PURPOSE OF CONTINUING PROFESSIONAL EDUCATION:

A. The purpose of [continuing professional education] CPE requirements for registered landscape architects is to ensure that the licensees update and advance their skill such that the public shall benefit [for] from the most current and effective standards of professional practice. To further the goal of public benefit, registered landscape architects are encouraged to fulfill a portion of their [continuing education] CPE requirements in the areas of ethics, professional conduct and public [protection] health, safety and welfare.

B. Timeframe of [continuing professional education] CPE: The board will require every [2] two (2) years a minimum of 30 contact hours of [professional continuing education] CPE to be completed as a condition for renewal of any [certificate of] registration under the Landscape [Architect] Architects Act. The license renewal shall be every year, with the [professional continuing education] CPE reporting every other year. The 30 hours reporting period will [be July 1, 1999, (for the years of 1997-1998 and 1998-1999, and every odd year thereafter)] begin July 1 of every odd-numbered year. During a biennial reporting period every registrant is required to obtain 30 [continuing education] CPE hours as approved by the board. If a registrant exceeds the minimum biennium requirement in any reporting cycle, credits may not be carried forward into the subsequent biennium.

C. Recordkeeping: Each registered landscape architect shall maintain:

(1) a log showing the subject and type of activity claimed, the sponsoring organization, location, duration and instructor's or speaker's name;

(2) documentation sufficient to prove completion of the activity claimed, such as attendance verification records, completion certificates or other documents;

(3) records for at least [four (4)] three (3) years; [and]

(4) copies of all records that may be requested by the board for audit verification purposes, which shall include:

(a) a list showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and [continuing education] CPE hours earned; and

(b) attendance verification records in the form of completion certifi-

cates, paid receipts or other documents supporting evidence of attendance; these records must be maintained for a period of three (3) years and copies may be requested by the board for audit verification purposes.

(5) a form [will be] as provided by the board in order to document [your continuing education] CPE units.

[(6) introduction: every licensee shall meet the continuing education requirements of these regulations for professional development as a condition for registration renewal.]

[16.44.5.8 NMAC - Rp 16NMAC 44.5.9, 10-05-02; A, 06-15-08]

#### 16.44.5.9 PREAPPROVED PROGRAM CATEGORIES:

A. Listed below are pre-approved methods for acquiring [professional continuing education] CPE hours. Hours must be relevant to the design professions [which] that are recognized as landscape architects, [interior designers], engineers, and architects. The conversion of hours or credit is as follows:

(1) three college semester hours: 30 hours per biennium

(2) three college quarter hours: 20 hours per biennium

(3) each continuing education unit: 10 hours per biennium

(4) professional development in course work, seminars, professional conventions, workshops related to design professions: hour per hour of lecture time per biennium

(5) teaching credit [is] (valid for teaching a course or seminar for the first time only): 15 hours per biennium

(6) each published professionally related paper, article, or book: 10 hours per biennium

(7) each professional presentation when presented at a national, state, regional or municipal program for the first time only: 3 hours per biennium

(8) serving on federal, state or municipal boards and commissions as a design professional where one is elected or appointed: 1 hour per month of service not to exceed 24 hours per biennium

(9) active participation in professional and technical societies and their committees: 4 hours per biennium

(10) committee chair or elected official of a professional technical society: 8 hours per biennium

(11) active participation in a public board specifically related to the practice of landscape architecture; licensee must not receive a salary and is only paid pursuant to the Per Diem and Mileage Act: 8 hours per biennium-

(12) business related courses: 10 hours per biennium

(13) self-improvement courses: 6

hours per biennium

(14) short subjects for design professionals, i.e. CLARB, NCARB etc.: as established by sponsor

B. Determination of credit: The board has final authority with respect to approval of courses, credit, [~~continuing education~~] CPE value for courses, and other methods of earning credit.

(1) Credit for college or community college approved courses will be based upon course credit established by the college.

(2) Credit for seminars, workshops, professional conventions and course/activities may be as recommended by the professional societies.

(3) Educational travel/independent study credit allowed shall not exceed 8 hours of occurrence with a maximum of 16 hours per biennium.

C. Exemptions: A registered landscape architect may be exempt, upon board review and approval, from [~~continuing education requirement~~] CPE requirements in any of the following situations:

(1) the new landscape architect's first renewal period is less than one year from the original date of licensure;

(2) a landscape architect is called to active duty in the armed forces for a period of time exceeding 120 consecutive days in a calendar year; this individual may be exempt from obtaining one-half of the required [~~continuing education~~] CPE during the current biennium;

(3) a landscape architect experiences physical disability, illness or other extenuating circumstances that prevents the landscape architect from practicing landscape architecture; the landscape architect shall provide supporting documentation for the board's review and approval; if the landscape architect elects to return to practice, the landscape architect shall complete all [~~professional development~~] CPE hours required during the current biennium.

D. Audit: Upon request, each registered landscape architect shall provide proof of satisfying the [~~continuing professional~~] CPE requirements. If the landscape architect fails to furnish the information to the board or if the information is not sufficient to satisfy the requirements, the licensee shall not be renewed.

E. Disallowance: If the board disallows one or more [~~continuing education~~] CPE activities claimed, the board may, at its discretion, allow the registered landscape architect up to 120 days after notification to substantiate the original claim or to complete other [~~continuing education~~] CPE activities sufficient to meet the minimum requirements.

F. Noncompliance: A reg-

istrant who does not satisfy the [~~continuing education~~] CPE requirement for registration renewal will be placed on probationary status and so notified by the board following the renewal date. The registrant must comply within six (6) months following the renewal date or the registration may be classified as suspended. The contact hours needed to fulfill the prior biennial period requirement shall not be included in the subsequent renewal period. Failure of a registrant to satisfy the [~~continuing education requirement~~] CPE requirements for registration renewal may be cause for the board to deny license renewal for the licensee.

[16.44.5.9 NMAC - Rp 16NMAC 44.5.9, 10-05-02; A, 06-15-08]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.6 NMAC, Sections 1, 2, 6, 8 and 9, effective June 15, 2008.

**16.44.6.1 ISSUING AGENCY:** Regulation and Licensing Department, Board of Landscape Architects, P.O. Box 25101, Santa Fe, NM 87504.

[16.44.6.1 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.6.2 SCOPE:** The provisions of Part 6 apply to all ~~[licensed]~~ registered landscape architects who plan to place their license on inactive status, or reinstate their inactive license to active status.

[16.44.6.2 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.6.6 OBJECTIVE:** This part establishes the requirements and procedures to place an active license ~~[in]~~ on inactive status or to reinstate the license to active status.

[16.44.6.6 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.6.8 INACTIVE STATUS:**

A. A current licensee in good standing is eligible to be placed on inactive status. A licensee who failed to renew a license by ~~[June 30]~~ July 1 of any year shall renew the license in accordance with Part 4 before the licensee can be considered for inactive status.

B. A licensee who wishes to be placed on inactive status shall notify the board administrator in writing before his or her current license expires. The administrator will acknowledge receipt of the notification.

C. A licensee shall pay the fees established by the board to be placed on inactive status.

D. Rendering or offering to render landscape architectural services or engaging in the practice of landscape architecture while on inactive status shall be considered sufficient grounds for disciplinary action by the board.

E. An inactive licensee shall comply with the ~~[continuing education]~~ CPE requirements described in Part 5.

~~[F. An inactive licensee shall not practice landscape architecture in New Mexico as defined in the Landscape Architects Act.]~~

~~[G.]~~ F. An inactive licensee shall not represent himself or herself as a registered landscape architect in public statements that include, but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal

resumes or *curricula vitae*, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations.

~~[H.]~~ G. A licensee on inactive status shall at all times comply with the provisions of Part ~~[40]~~ 7, Code of Professional Conduct ~~[including, without limitation]~~.

[16.44.6.8 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.6.9 REINSTATEMENT FROM INACTIVE STATUS:**

A. If the inactive licensee requests reinstatement to active status, he or she shall:

(1) ~~[at the next renewal cycle submit the renewal application form with the appropriate fee]~~ notify the board in writing, requesting reinstatement to active status;

(2) provide satisfactory proof of completion of the ~~[continuing education]~~ CPE requirements;

(3) not have violated any rule of the Landscape Architects Act or the rules and regulations of the board; and

(4) pay the appropriate renewal fee established by the board ~~[?]~~ .

~~[S.]~~ B. A licensee on inactive status can return to active status any time during the renewal cycle provided he or she ~~[pay]~~ pays the appropriate fees and ~~[are]~~ is current with the CPE ~~[requirement]~~ requirements of Part 5.

~~[P.]~~ C. A licensee on inactive status shall not render or offer to render landscape architectural services or otherwise engage in the practice of landscape architectural until he or she receives ~~[a new license issued by the board]~~ an active license.

~~[E.]~~ D. A licensee who does not meet the ~~[continuing professional education]~~ CPE requirements may not move into active status.

[16.44.6.9 NMAC - N, 10-05-02; A, 06-15-08]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.7 NMAC, Sections 2, 3, 6 and 8, effective June 15, 2008

**16.44.7.2 SCOPE:** This part applies to the board, licensees, certificate holders, applicants for licensure or certification, and the general public.

[16.44.7.2 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.7.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape ~~[Architect]~~ Architects Act, NMSA 1978 Sections 61-

24-B1, 61-24-B3, 61-24-B6, 61-24-B7, 61-24-B10.

[16.44.7.3 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.7.6 OBJECTIVE:** This part establishes the standards against which the required professional conduct of a registered landscape architect or a landscape architect in training is measured. Each licensee, certificate holder and applicant will be governed by this part whenever providing landscape architectural services. A violation of this part is sufficient reason for disciplinary action pursuant to the Landscape ~~[Architect]~~ Architects Act.

[16.44.7.6 NMAC - N, 10-05-02; A, 06-15-08]

**16.44.7.8 CODE OF PROFESSIONAL CONDUCT:**

A. This code expresses in general terms the level of professional conduct expected of ~~[registered landscape architects]~~ licensees in the state of New Mexico. Such a code is no guarantee of moral actions on the part of the ~~[registrants]~~ licensees but depends upon the integrity of each registrant or certificate holder to conduct himself or herself in a responsible and straightforward manner both in dealings with clients and other professionals.

B. ~~[Registered landscape architects]~~ Licensees should be more than a group of individuals offering a service to the public. They should comprise an entity with a bond between ~~[registrants]~~ licensees based on mutual respect and a dedication to improving the quality of life for all persons.

C. The ~~[registered landscape architect]~~ licensee shall:

(1) exert every effort towards the preservation and protection of ~~[our]~~ our natural resources and toward understanding the interaction of the economic and social systems with these resources;

(2) further the welfare and advancement of the profession by constantly striving to provide the highest level of professional services, avoiding even the appearance of improper professional conduct;

(3) serve the client or employer with integrity, understanding, knowledge, and creative ability and ~~[shall]~~ respond morally to social, political, economic, and technological influences;

(4) make full disclosure to the client or employer of any financial interest, ~~[which]~~ that even remotely bears upon the services or project;

(5) truthfully and clearly inform the client or employer of ~~[his/her]~~ his or her qualification and capabilities to perform services;

(6) not make exaggerated, mis-

leading, deceptive or false statements or claims to the public about ~~[his/her]~~ his or her professional qualifications, experience or performance;

(7) regard as confidential any information obtained by ~~[him/her]~~ him or her as to the business affairs and technical methods or processes ~~[to]~~ of a client or employer;

(8) not give, lend, or promise anything of value to any public official in order to influence or attempt to influence the official's judgment or action in the letting of ~~[his]~~ contracts;

(9) refrain from lending ~~[his/her name or seal]~~ his or her name or stamp/seal for plans or other documents for the preparation of which ~~[he/she]~~ he or she was not directly responsible;

(10) refrain from using the advantages of a salaried position to influence the letting of contracts;

(11) ~~[recognize the contribution of others in the planning, design, and construction of the physical environment and shall not knowingly make false statements about their professional work nor maliciously injure or attempt to injure the prospect's practice or employment position of those so engaged;]~~ not knowingly make false statements about the professional work of others; and

(12) refrain from engaging in any discriminatory practices prohibited by law in the employment of ~~[his/her]~~ his or her professional and ~~[not professional]~~ non-professional personnel and in the conduct of ~~[his/her]~~ his or her business.

[16.44.7.8 NMAC - N, 10-05-02; A, 06-15-08]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.8, Sections 2, 3, 5 and 8, effective June 15, 2008

**16.44.8.2 SCOPE:** The provisions of 16.44.8 NMAC apply to all applicants for ~~[licensure, licensed holders for their annual renewal], registration or certification, annual renewal for licensees~~ and anyone who requests a mailing list of ~~[Landscape Architects]~~ licensees or copies of public records.

[16.44.8.2 NMAC - Rp 16 NMAC 44.4.2, 10-09-02; A, 06-15-08]

**16.44.8.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape ~~[Architect]~~ Architects Act, NMSA 1978 Section 61-24B11.

[16.44.8.3 NMAC - Rp 16 NMAC 44.4.3, 10-09-02; A, 06-15-08]

**16.44.8.5 EFFECTIVE DATE:** October 9, 2002, unless a ~~[different]~~ later date is cited at the end of a section.

[16.44.8.5 NMAC - Rp 16 NMAC 44.4.5, 10-09-02; A, 06-15-08]

### 16.44.8.8 FEES:

A. The following is a schedule of fees to be paid by ~~[applicant/registrant]~~ applicant or licensee. All fees are non refundable:

(1) Application for licensure <del>[(non refundable)]</del>	\$ 75.00
(2) Initial <del>[certificate of registration (non refundable)]</del> registration for landscape architects	\$200.00
(3) Initial certification for landscape architects in training	\$150.00
<del>[(3)]</del> (4) Annual renewal <del>[(non refundable)]</del> for landscape architects	<del>[175.00]</del> \$200.00
(4) Reinstatement of suspended licensure, current renewal fees, plus all applicable back renewal fees, and late fees if any, and (from July 1, 1995**) for past 12 months]	
(5) Annual renewal for landscape architects in training	\$150.00
<del>[(5)]</del> (6) Duplicate of original certificate	\$35.00
<del>[(6)]</del> (7) Replacement certificate, new name	\$35.00
<del>[(7)]</del> Copy of certificate	\$35.00
(8) Mailing list	<del>[75.00]</del> \$100.00
(9) Mailing labels	<del>[75.00]</del> \$125.00
(10) Verification of <del>[licensure]</del> <u>registration or certification</u>	\$10.00
(11) Score verification	as required by CLARB
(12) L.A.R.E. <del>[examination]</del>	as required by CLARB
(13) Late fee	(see Subsection B of 16.44.8.8 below.)
(14) Inactive status fee <del>[(non refundable)]</del>	<del>[87.50]</del> \$ 100.00
(15) Reactivation of licensure from inactive status	<del>[175.00]</del> \$ 200.00
(16) Copying cost per 8 1/2" x 11" page	\$.30
(17) Reinstatement of suspended license:	Current renewal fees and late fees as assessed

B. Late fees:

(1) The board will assess a late fee of ~~[\$50.00 per month for each month]~~ \$100.00 if the renewal-application is not received ~~[up to 6 month]~~ by July 1 and an additional \$100.00 per month thereafter. The maximum amount of a late fee ~~[will by \$300.00]~~ shall not exceed twice the annual renewal fee. After six (6) months a ~~[license may]~~ registration or certificate will be suspended for non-compliance of renewal requirements.

(2) A late fee will be assessed if the renewal fee, renewal form, and, when applicable, complete ~~[continuing education requirement is]~~ CPE requirements are not received in the board office or post-marked by July ~~[1<sup>st</sup>]~~ 1.

(3) If a registrant is approved under an exemption as described in Paragraph 2 of Subsection C of 16.44.5.9 NMAC, a late fee will not be assessed.

[16.44.8.8 NMAC - Rp 16 NMAC 44.4.8, 10-09-02; A, 06-15-08]

## NEW MEXICO BOARD OF LANDSCAPE ARCHITECTS

This is an amendment to 16.44.9 NMAC, Sections 2, 3, 6, 8 and 9, effective June 15, 2008.

**16.44.9.2 SCOPE:** The provisions of 16.44.9 NMAC apply to all ~~[licensed holders,]~~ licensees and applicants for such registration or certification licensure. These provisions may also be of interest to anyone who may wish to file a complaint against a licensee of this board. [16.44.9.2 NMAC - Rp 16 NMAC 44.3.2, 10-05-02; A, 06-15-08]

**16.44.9.3 STATUTORY AUTHORITY:** This part is adopted pursuant to the Landscape ~~[Architect]~~ Architects Act, NMSA 1978 Section 61-24B12, and Section 61-24B16. [16.44.9.3 NMAC - Rp 16 NMAC 44.3.3, 10-05-02; A, 06-15-08]

**16.44.9.6 OBJECTIVE:** The objective of 16.44.9 NMAC is to establish the procedures for filing complaints against a licensee, the authority of the board regarding ~~[ground]~~ grounds for denial, suspension, or revocation of a license. [16.44.9.6 NMAC - Rp 16 NMAC 44.3.6, 10-05-02; A, 06-15-08]

**16.44.9.8 COMPLAINT PROCEDURES:**  
A. Inquiries regarding filing of complaints.

(1) Inquiries made to the board or to a board member regarding a potential complaint will be referred to the board administrator for a response.

(2) Upon receipt of an inquiry, the board administrator shall forward to the potential complainant a statement regarding the board's jurisdiction, the conduct or grounds for possible action by the board against a licensee or applicant, and a complaint form with instructions on how to file the complaint. Complaints ~~[should]~~ shall be submitted in writing on the prescribed form, signed and notarized, and state the facts upon which the complaint is based ~~[, however, oral complaints may be received and investigated. Anonymous complaints will not be investigated, except in unusual circumstances].~~

~~[(3) The complaint, once made, will come under the provisions of this part. A complainant cannot withdraw a complaint.]~~

B. Procedures for processing complaints. The board administrator shall:

(1) log in the date of receipt of the complaint;

(2) determine that the subject of the complaint is a ~~[licensed]~~ registered landscape architect, a certified landscape architect in training or an applicant or person otherwise within the jurisdiction of the board;

(3) assign a complaint number and set up an individual file; complaint numbering shall begin in January of each year;

(4) forward the complaint to the chair of the complaint committee and the complaint manager or a designee;

(5) send a letter to the complainant confirming receipt of the complaint.

C. Review by the complaint committee.

(1) The chairperson of the board shall appoint a board member to chair the complaint committee. The complaint committee shall consist of at least one member of the board.

(2) The complaint manager, if assigned, or designee will review the complaint and meet with the administrative prosecutor and complaint committee chair as needed.

(3) If the allegations in the complaint would, if substantiated, constitute grounds for disciplinary action, the complaint committee will recommend a course of action regarding investigation of the complaint.

(4) The complaint committee shall oversee the investigation of the complaint. A case summary including the alleged violations of the code of conduct or other parts of the regulations or Act will be presented to the full board along with recommendation(s) for disposition of the complaint. The identity of the licensee or applicant and the complainant will not be disclosed to the full board by the complaint committee.

(5) Unless the complaint committee determines that it will impede an investigation or interfere with the acquisition of documents or relevant papers or the development of the case, the complaint committee shall inform the licensee or applicant of the complaint and request a response to the allegations. Disclosure of data, communications, and information relating to actual or potential disciplinary action shall be made in accordance with Section 61-1-11 NMSA 1978 or superceding statute.

(6) The complaint committee may employ experts, consultants, or private investigators to assist in investigations of complaints.

(7) The complaint committee, on behalf of the board, may issue investigative subpoenas, pursuant to Section 61-1-4(A) NMSA 1978.

D. Review by the full

board.

(1) Any board member or any member of the complaint committee who is partial or who believes he or she is not capable of judging a particular controversy fairly on the basis of ~~[it]~~ its own circumstances shall not participate in the decision whether to issue a notice of contemplated action and shall not participate in the hearing, deliberation, or decision of the board.

(2) The board shall review the case summary presented by the complaint committee, relevant documents, witness statements, and other pertinent information regarding the complaint. If the board has sufficient evidence that a violation may have occurred, the board shall forward the evidence to the administrative prosecutor for issuance of a notice of contemplated action.

(3) Following the issuance of a notice of contemplated action, the board may at its option authorize a board member, the hearing officer, or the administrative prosecutor to confer with the applicant or the licensee for the purpose of settlement of the complaint. Such settlement must be approved by the board, must be with the consent of the applicant or licensee, and shall include a knowing and intentional waiver by the applicant or the licensee of his or her rights to hearing under the Uniform Licensing Act.

(4) The board may refer a complaint to the attorney general for injunctive proceedings or to the district attorney for criminal prosecution.

[16.44.9.8 NMAC - Rp 16NMAC 44.3.8, 10-05-02; A, 06-15-08]

## 16.44.9.9 ADJUDICATORY PROCEEDINGS:

A. General provisions and pre-hearing and preliminary matters.

(1) All hearings shall be conducted either by the board or, at the election of the board, by a hearing officer.

(2) If the board appoints a hearing officer, the hearing officer shall have authority to decide pre-hearing matters, preside over the hearing, and direct post-hearing matters in accordance with the requirements of the case in a manner that ensures an efficient and orderly hearing and expedites the final resolution of the case. Except as otherwise limited in this part, the hearing officer shall have the authority to rule on all non-dispositive motions. If the board does not appoint a hearing officer or if the hearing officer is unavailable or unable to proceed, the board chair or other board member designated by the board shall have the authority to decide pre-hearing or preliminary matters on behalf of the board. This authority shall be in accordance with the requirements of the case in a manner that

ensures an efficient and orderly hearing and expedites the final resolution of the case, including, without limitation,

(a) unopposed or stipulated motions to change venue;

(b) motions for continuance of a hearing date; a motion to vacate the hearing must contain a statement that the licensee or applicant waives his or her right to a hearing held not more than sixty (60) days from the date of service of the notice of hearing;

(c) the granting of one notice of peremptory excusal to each party if the notice is timely and if the peremptory excusal does not result in a loss of a quorum of the board; and

(d) motions regarding discovery.

(3) The original of any papers and pleadings shall be filed with the board. Copies shall be sent to the hearing officer and attorneys or parties of record.

(4) The hearing officer or designated board member shall issue appropriate orders to control the course of the proceedings.

(5) Consistent with provisions of the Uniform Licensing Act and to the extent practicable, the rules of civil procedure for the district courts shall apply unless the hearing officer or designated board member orders otherwise.

(6) A request for an order shall be made by motion filed with the board. Except for motions made during the course of the hearing, a motion shall be in writing. A motion shall state with particularity the grounds for the motion and shall set forth the relief and order sought.

(7) A motion shall be accompanied by a memorandum brief in support of the motion. The brief shall state with particularity the grounds for the motion and shall contain citation to authorities, statutes, and references to the pleadings on file. If matters outside of the pleadings are considered, a copy of the referenced material shall be attached to the brief.

(8) The hearing officer or the designated board member may order the filing of briefs or other documents and may set oral argument on any matter.

(9) No more than two (2) continuances of the hearing date will be granted without the approval of the board for good cause shown.

(10) All dispositive motions shall be decided by the board.

(11) No proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall be effective unless approved by the board and executed by the board and the licensee or applicant. The board or hearing officer may seek information from the administrative prosecutor and the licensee or applicant concerning circum-

stances of the case relevant to a consideration of the proposed settlement or clarification of the proposed terms and conditions. No board member is presumed to be biased and shall not be excused based solely on the reason that the member considered a proposed settlement, consent agreement, or other proposal for the resolution of a pending disciplinary case. The board may submit a counterproposal for the settlement or resolution of the case.

(12) Any proposed settlement, consent agreement, voluntary surrender of a license in lieu of prosecution, or other proposal for the resolution of a pending disciplinary case shall contain at least the following:

(a) an admission of all jurisdictional facts; an acknowledgment of the rights contained in the Uniform Licensing Act and an express waiver of those rights and of all rights to hearing and judicial review or any other opportunity to contest the validity of the board order in any other proceeding or forum;

(b) a provision that the proposal resolves only the violations alleged in the specific notice of contemplated action and a statement that the board reserves the right to initiate other proceedings for any other violations of the act or board regulations;

(c) a description of the facts underlying each alleged violation;

(d) if appropriate, a list of the acts or practices from which the licensee or applicant will refrain in the future;

(e) a statement of the type, terms, and conditions of the proposed disciplinary action of the board;

(f) a statement that the licensee will be responsible for all costs of disciplinary proceedings or a statement setting forth the reason why the licensee should be excused from paying costs; the affidavit of the board administrator concerning the costs incurred to date shall accompany the proposal;

(g) a statement that the decision and order of the board shall be a public record and shall be reported as required by law; and

(h) other provisions necessary to ensure the complete and final resolution of the proceedings.

(13) A proposal to settle a matter shall not stay the proceedings or vacate the hearing date unless otherwise ordered by the hearing officer or presiding officer upon the filing of a timely motion.

B. Duties of the board administrator. The board administrator shall:

(1) after consultation with the board or hearing officer, issue a notice of hearing stating the date, time, and place of the hearing;

(2) execute on behalf of the hear-

ing officer or board notices, scheduling orders, subpoenas, and subpoenas *duces tecum*, and other routine procedural documents that facilitate the efficient conduct of adjudicatory proceedings;

(3) maintain the official record of all papers and pleadings filed with the board in any matter;

(4) prepare an affidavit as to costs of any disciplinary proceeding at the conclusion of any hearing or upon request by a party submitting a proposed settlement, consent agreement, or voluntary surrender of a license in lieu of prosecution;

(5) prepare, certify, and file with the district court the record of the case on appeal or review;

(6) unless the board orders otherwise, have the authority to sign the decision of the board to grant or refuse a request to reopen the case.

C. Conduct of hearings.

(1) The hearing officer, or presiding officer if the case is heard by the board, shall ensure the fair, efficient, and orderly conduct of the hearing in accordance with the Uniform Licensing Act.

(2) Unless the board orders otherwise, a board member hearing officer, the board chair, or presiding officer shall have the authority to sign the written decision of the board.

(3) The board administrator shall serve the decision of the board on the licensee or applicant in accordance with law.

(4) A motion for an order staying the operation of a board decision shall be decided by the board.

[16.44.9.9 NMAC - N, 10-05-02; A, 06-15-08]

## NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.1 NMAC, Section 7 and the addition of section 12, effective 06/13/08.

**16.62.1.7 DEFINITIONS:** The following rules and regulations are for the purpose of implementing the provisions of the New Mexico Real Estate Appraisers Act.

A. "Acceptable" appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, review appraisal, market analysis, real estate counseling/consulting, highest and best use analysis and feasibility analysis. All experience claimed after December 1, 1990, must be in conformance with applicable national uniform standards of professional appraisal practice (USPAP).

Appraisal experience acceptable toward licensing or certification must have been gained under the supervision of an appraiser who is certified at a level equal to or greater than the license or certificate the applicant is seeking.

B. "Appraisers act" or "act" means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

C. "Complaint committee" shall be appointed by the board. The chairperson of the committee shall be an appraiser board member. The board appointed complaint committee is for the purpose of review of complaints and shall make recommendations to the board as to its findings. No real estate appraiser organization shall have a majority membership on the committee.

D. "Complex" means one to four family residential property appraisal one in which the property to be appraised, the form of ownership, or the market conditions are atypical (bank holding company supervision manual, 1999, page 10, section 2231.0.9.3).

E. "Content approval for distance education" non-academic credit college courses provided by a college shall be approved by the appraiser qualifications board (AQB) and the New Mexico real estate appraisers board.

F. "Direct supervision" means that a supervising appraiser is physically present to direct and oversee the production of each appraisal assignment.

[F.] G. "Duly made application" means an application to the New Mexico real estate appraisers board including paragraphs (1-7) set out below, in addition to any other requirements of the board:

(1) completed application on the form provided by the board; the form must be signed by the applicant attesting to the truthfulness of the information provided in the application;

(2) letters of verification from at least three individuals who are not related to the applicant but who are acquainted personally and professionally with him/her and who can attest that the applicant is of good moral character; and is competent;

(3) a statement attesting that he/she is a native, a naturalized citizen or a legal resident of the United States;

(4) transcripts or certificates or statements showing successful completion of the required appraisal courses;

(5) a recent photograph of the applicant in which the applicant clearly is discernible; the photograph must be at least two inches by three inches in size;

(6) a check or money order for the fees set out in 16.62.12.8 NMAC;

(7) an appraiser experience log

recorded on the forms approved by the board or on another approved form, if required.

[G.] H. "Education advisory committee" shall be appointed by the board for the purpose of review of applications for course approval and sponsorship approval of appraiser educational offerings and shall make recommendations to the board as to its findings. Membership in a professional organization or association shall not be a prerequisite to serve on the committee. No real estate appraiser organization shall have a majority membership on the committee.

[H.] I. "Ethics provision" emphasizes the personal and professional obligations and responsibilities of the individual appraiser.

[I.] J. "Experience" is defined as verifiable time spent in performing tasks in accordance with the definition of "appraisal" and "appraisal assignment", as stated in the act, Section 61-30-3 NMSA 1978. Such tasks include inspecting and analyzing properties; assembling and analyzing relevant market data; forming objective opinions as to the value, quality or utility of such properties; and preparing reports or file memoranda showing data, reasoning and conclusions. Professional responsibility for the valuation function is essential for experience credit.

[J.] K. "Experience" will be submitted to the board in the form of a log, which indicates assignment information and type, compensation status, time spent on the assignment and whether the applicant signed the report. Experience credit claimed on the log must be attested to by the supervising appraiser. Experience logs are subject to review and request for supporting documentation.

[K.] L. "Experience review process" is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable national uniform standards of professional appraisal practice (USPAP) standards.

[L.] M. "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

[M.] N. [~~"License"~~] "Licensee" means an apprentice, license, residential certificate or general certificate.

[N.] O. "Location" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe, New Mexico

[O.] P. "Module" is an apprais-

al subject matter area (and required hours of coverage) as identified in the required core curriculum. All modules identified in the required core curriculum for a specific classification must be successfully completed to satisfy the educational requirements as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

[P.] Q. "Nonresident" for the purpose of 61-30-20 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current apprentice registration, license, or certificate, and is good standing, in another state.

R. "Practicing appraiser" means a state licensed or certified appraiser in good standing, engaged in performing appraisal assignments.

S. "Principle place of business" means the location of head office of a business where the books and records are kept and management works.

[Q.] T. "Required core curriculum" is a set of appraisal subject matter (known as 'modules') which require a specified number of educational hours at each credential level; as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

[R.] U. [~~"Supervising appraiser"~~] "Supervisor" means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last two (2) years that affects the supervisor's legal eligibility to engage in appraisal practice. [A supervising appraiser may not supervise more than three (3) appraisers at one time regardless of level of licensure.]

[S.] V. "The board" may reject any application for an apprentice license or certificate for:

(1) incomplete, inaccurate or fraudulent application;

(2) application not submitted on the proper board-approved form;

(3) failure to pay the fees in full in a form acceptable to the board.

W. "Trainee" means an individual who is being taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

[T.] X. "Uniform standards of professional appraisal practice" (USPAP) deal with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004; A, 11/25/06; A, 06/13/08]

**16.62.1.12 SUPERVISING APPRAISER/TRAINEE:**



A. Supervision of trainees: An appraiser may engage a declared trainee to assist in the performance of real estate appraisals and related activities, provided the supervising certified real estate appraiser:

(1) has been certified for at least two years;

(2) has no more than three trainees working under his supervision at one time; prior to the date any trainee begins performing real estate appraisal and related activities under his or her supervision, the supervisor must inform the board of the name of the trainee on the declaration form prescribed by the board; the supervisor must also inform the board within ten days when a trainee is no longer working under his supervision;

(3) actively and personally supervises the trainee:

(a) when training for residential license or residential certification the supervisor must accompany the trainee on inspections of the subject property on the first 75 assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of the national uniform standards of professional appraisal practice (USPAP) for the property type and provided the property is less than 100 miles from the supervisor's primary business location; the supervisor must accompany the trainee on all inspections of subject properties that are located more than 100 miles from the supervisor's primary business location; the supervisor and trainee must have primary business location in the same state;

(b) when training for general certification the supervisor must accompany the trainee on inspections of the subject property on the first 10 non-residential assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of the national uniform standards of professional appraisal practice (USPAP) for the property type and market area; the supervisor and trainee must have primary business location in the same state;

(4) reviews all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee are utilized; the supervisor signs the appraisal report and certifies the report is in compliance with the uniform standards of professional appraisal practice (USPAP); the supervisor is required to sign the appraisal experience log at least every 30 days;

(5) must attend a supervisor/trainee education program

approved by the appraisal board regarding the role of a supervisor prior to the declaration of the first new trainee or within 90 days after such supervision begins; if the supervisor does not take the class within 90 days after the supervision begins, the trainee may no longer work under the supervision of that supervisor until the class is taken; thereafter the supervisor must attend the class every other licensing cycle;

(6) shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

B. Trainee. All trainees shall perform all real estate appraisal and related activities under the immediate, active, and personal supervision of a certified real estate appraiser. All appraisal reports must be signed by the trainees declared supervisor. By signing the appraisal report, the certified appraiser accepts responsibility with the trainee for the content of and conclusions of the report. A trainee may assist in the performance of real estate appraisals provided the trainee:

(1) maintains a log on a form prescribed by the board that includes, but is not limited to, each appraisal performed by the trainee, the type of the property appraised, type of appraisal performed, complete street address of the subject property, the date the report was signed, the number of hours claimed, the name of the supervisor for that appraisal, the supervisor's certificate number, and whether the supervisor accompanied the trainee on the inspection of the subject; the log must show all appraisals and related activities performed by the trainee and must be updated and signed by the supervisor at least every 30 days;

(2) must attend a supervisor/trainee education program approved by the appraisal board either before supervision begins or within 90 days after such supervision begins; if the trainee does not take the class within 90 days after supervision begins, the trainee shall not receive appraisal experience credit for appraisals performed until the class is taken;

(3) must assure that the supervisor has properly completed and sent the declaration form to the appraisal board on or before the day the trainee begins assisting the supervising appraiser;

(4) trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of Subsection B of 16.62.1.12 NMAC.

C. Board notification of existing supervisor. Effective month/day/year certified appraisers who are currently supervising trainees must:

(1) declare with the board the name of each trainee on the declaration form prescribed by the board within 30 days of 06/13/08;

(2) not add any new trainees until they have met requirements of Subsections A and B of this section;

(3) trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of Subsection C of 16.62.1.12 NMAC.

D. Board notification of existing trainee. Effective month/day/year trainee who is currently being supervised must:

(1) assure that the supervisor has properly completed and sent the supervisor declaration form to the board within 30 days of 06/13/08;

(2) maintain the experience log, per part B1, on the form prescribed by the board effective month/day/year; all logs of appraisals and related activities completed prior to 06/13/08 are valid in accordance with regulations in place at the time they were performed;

(3) if training is not completed by 2009 renewal cycle, trainee must complete the approved supervisor/trainee education program prior to renewal.  
[16.62.1.12 NMAC - N, 06/13/08]

## NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.2 NMAC, Section 8, effective 06/13/08.

**16.62.2.8 APPRENTICE:** A holder of an apprentice registration, but not a license or certificate, is authorized to prepare appraisals of all types of real estate or real property, provided such appraisals are not described or referred to as "state licensed" or "state certified" and provided further, the apprentice appraiser does not assume or use any title, designation or abbreviation likely to create the impression that he/she is a state-licensed or state-certified real estate appraiser. Apprentices are not qualified to perform under FIRREA, Title XI. [A.] Applicants for apprentice real estate appraisers in the state of New Mexico must:

[~~(A)~~] A. be a legal resident of the United States;

[~~(B)~~] B. have reached the age of majority;

[~~(C)~~] C. prove successful completion of real estate appraisal education of at least 75 board-approved classroom hours; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; and

the 15-hour national USPAP course or its equivalent;

~~[(4)] D.~~ courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased and none may be taken on-line;

~~[(5)] E.~~ demonstrate to the board that he/she is honest, trustworthy and competent;

~~[(6)] F.~~ successful completion of a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

~~[(7)] G.~~ pay the fees set out in 16.62.12.8 NMAC;

~~[(8)] H.~~ submit a duly made application to the board office.

~~B. Training: The apprentice appraiser shall be subject to direct supervision by a supervising appraiser. The supervising appraiser shall be responsible for the training, guidance, and direct supervision of the apprentice appraiser by:~~

~~(1) accepting responsibility for the appraisal report by signing and certifying the report complies with USPAP;~~

~~(2) reviewing and signing the apprentice appraiser appraisal report(s);~~

~~(3) personally inspecting each appraised property with the apprentice appraiser until the supervising appraiser determines the apprentice appraiser is competent, in accordance with the competency rule of the national uniform standards of professional appraisal practice (USPAP) for the property type;~~

~~(4) the apprentice appraiser is permitted to have more than one supervising appraiser;~~

~~(5) an appraisal log shall be maintained by the apprentice appraiser and the supervising appraiser jointly on the experience log as approved by the board.]~~

[1/14/00; 16.62.2.8 NMAC - Rn & A, 16 NMAC 62.2.8, 09/13/2004; A, 11/25/06; A, 06/13/08]

**NEW MEXICO REAL ESTATE APPRAISERS BOARD**

This is an amendment to 16.62.3 NMAC, Section 8, effective 06/13/08.

**16.62.3.8 LICENSE:** A holder of a license may appraise complex residential or nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a license may not assume or use any title, designation or abbreviation likely to create the impression of certification.

A. For federally related transactions, the licensed real estate appraiser classification applies to the appraisal of non-complex one to four residential units having a transaction value less than \$1,000,000 and complex one to four residential units having a transaction value less than \$250,000.

B. Complex one-to four-family residential property appraisal means one in which the property to be appraised, the form of ownership, or the market conditions are atypical. For non-federally related transaction appraisals, transaction value shall mean market value.

C. All licensed real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP).

D. Applicants for licensure in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove successful completion prior to November 15, 2007, of 90 classroom hours of board approved real estate appraisal education; real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principle and procedures in: basic principles - 30 hours; basic appraisal procedures - 30 hours; the 15-hour national uniform standards of professional appraisal practice (USPAP) course or its equivalent; and a minimum of 15 hours from one or more of the following:

(a) residential market analysis and highest and best use;

(b) residential appraiser site valuation and cost approach;

(c) residential sales comparison and income approaches;

(d) residential report writing and case studies;

(4) submit application for acceptance of appraisal courses no later than November 15, 2007; education courses which do not meet the appraiser qualifications board (AQB) criteria effective January 1, 2008 cannot be carried forward after December 31, 2007;

(5) prove (effective January 1, 2008 and thereafter an applicant for licensure, not completing their education requirement prior to December 31, 2007) successful completion of real estate appraisal education of at least 150 board-approved classroom hours as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules (no more than 50% of the courses from courses d. through g. may be from courses offered over the internet or distance learning modalities):

(a) basic appraisal principles	30 hours
(b) basic appraisal procedures	30 hours
(c) the 15 hour national USPAP course and examination	15 hours
(d) residential market analysis and highest and best use	15 hours
(e) residential appraiser site valuation and cost approach	15 hours
(f) residential sales comparison and income approaches	30 hours
(g) residential report writing and case studies	15 hours

(6) successfully complete the appraiser qualifications board (AQB) approved licensed real estate appraiser examination; there is no alternative to successful completion of the examination; successful completion of the examination is valid for a period of 24 months, and the applicant must meet the requisite experience requirement within 24 months;

(7) courses taken in satisfying the qualifying education requirements shall not be repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(8) demonstrate to the board that he/she is honest, trustworthy and competent;

(9) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(10) pay the fee set out in 16.62.12.8 NMAC;

(11) meet the minimum criteria for state licensure issued by the appraisers qualifications board of the appraisal foundation;

(12) submit a duly made application to the board office.

E. Experience: applicants for state licensure must have a minimum of 2,000 hours of experience obtained in no fewer than twelve (12) months in real property appraisal as defined in Part 1, submitted on a form prescribed by the board and attested to by the supervising appraisers under whose supervision the experience was obtained.

~~F. Upgrade in licensure: Moving up in licensure shall be subject to direct supervision by a supervising appraiser. The supervising appraiser shall be responsible for the training, guidance, and direct supervision of the licensed appraiser by:~~

~~(1) accepting responsibility for the appraisal report by signing and certifying the report complies with USPAP;~~

~~(2) reviewing and signing the licensed appraiser appraisal report(s);~~

~~(3) personally inspecting each appraised property with the licensed appraiser until the supervising appraiser determines the licensed appraiser is competent, in accordance with the competency rule of USPAP for the property type;~~

~~(4) the licensed appraiser is permitted to have more than one supervising appraiser;~~

~~(5) an appraisal log shall be maintained by the licensed appraiser and the supervising appraiser jointly on the experience log as approved by the board.]~~

[10/1/97; 16.62.3.8 NMAC - Rn & A, 16 NMAC 62.3.8, 09/13/2004; A, 11/25/06; A, 06/13/08]

## NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.4 NMAC, Section 8, effective 06/13/08.

**16.62.4.8 RESIDENTIAL CERTIFICATION:** A holder of a residential certificate is eligible to prepare appraisals of all residential real estate for federally related transactions or other uses. He/she may appraise nonresidential real estate provided such appraisals are not described or referred to as meeting the requirements of FIRREA. The holder of a residential certificate may not assume or use any title, designation or abbreviation likely to create the impression of general certification.

A. The certified residential real estate appraiser classification qualifies the appraiser to appraise one to four residential units without regard to value or complexity. The classification includes the appraisal of vacant or unimproved land that is utilized for one to four family purposes or for which the highest and best use is for one to four family purposes. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

B. All certified residential real estate appraisers must comply with the competency rule of the national uniform standards of professional appraisal practice (USPAP).

C. Applicants for certification in residential appraisal in the state of New Mexico must:

(1) be a legal resident of the United States;

(2) have reached the age of majority;

(3) prove successful completion, prior to November 15, 2007 of 120 classroom hours of board approved real estate appraisal education; real estate appraisal programs completed for credit toward this requirement shall include coverage of the following topics, with emphasis on ethics, and basic appraisal principles and procedures in: basic appraisal principles - 30 hours; basic appraisal procedures - 30 hours; the 15-hour national uniform standards of professional appraisal practice (USPAP) course or its equivalent; and a minimum of 45 hours from one or more of the following:

(a) residential market analysis and highest best use;

(b) residential appraiser site valuation and cost approach;

(c) residential sales comparison and income approaches;

(d) residential report writing and case studies;

(e) statistics, modeling and finance;

(f) advanced residential applications and case studies;

(g) appraisal subject matter electives;

(4) prove successful completion of the appraiser qualifications board (AQB) approved certified residential or certified general real estate appraiser examination; there is no alternative to successful completion of the examination; application for the examination must be made no later than November 15, 2007;

(5) submit application for acceptance of appraisal courses no later than November 15, 2007; education courses which do not meet the appraiser qualifications board (AQB) criteria effective January 1, 2008 cannot be carried forward after December 31, 2007;

(6) prove (effective January 1, 2008 and thereafter an applicant for licensure, not completing their education requirement prior to December 31, 2007) successful completion of real estate appraisal education of at least 200 board-approved classroom hours as outlined in the required core curriculum of the appraiser qualifications board (AQB); real estate appraisal education programs completed for credit toward this requirement shall include coverage of the following modules (no more than 50% of the courses from courses d. through j. may be from courses offered over the internet or distance learning modalities):

[Continued on page 356]

(a) basic appraisal principles	30 hours
(b) basic appraisal procedures	30 hours
(c) the 15 hour national USPAP course and examination	15 hours
(d) residential market analysis and highest and best use	15 hours
(e) residential appraiser site valuation and cost approach	15 hours
(f) residential sales comparison and income approaches	30 hours
(g) residential report writing and case studies	15 hours
(h) statistics, modeling and finance	15 hours
(i) advanced residential applications and case studies	15 hours
(j) appraisal subject matter electives	20 hours

(7) hold (effective January 1, 2008 and thereafter applicants for residential certification not completing their education requirement prior to December 31, 2007) an associates degree or higher from an accredited college, junior college, community college or university unless the requirements of Paragraph (8) of Subsection D of 16.62.4.8 NMAC are satisfied;

(8) in lieu of the associate degree, an applicant for the residential certification license shall have successfully passed each of the following collegiate subject matter courses from an accredited college, junior college, community college or university:

- (a) English composition;
- (b) principles of economics (micro or macro);
- (c) finance;
- (d) algebra, geometry or higher mathematics;
- (e) statistics;
- (f) computers, word processing and spreadsheets;
- (g) business or real estate law;

(9) total hours of equivalent college courses in lieu of an associates degree; 21 semester credit hours or its equivalent for the residential certified appraiser; if an accredited college or university (accredited by the commission of colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. secretary of education) accepts the college-level examination program (CLEP) examination(s) and issues a transcript for the exam, showing its approval, it will be considered as credit for the college course;

(10) pass examination: the appraiser qualifications board (AQB) approved certified real estate appraiser examination must be successfully completed; there is no alternative to successful completion of the examination; the requisite experience requirement must be met within 24 months, successful completion of the examination is valid for a period of 24 months;

(11) assure courses taken in satisfying the qualifying education requirements are not repetitive in nature; each course credited toward the required number of qualifying education hours shall represent a progression in which the appraiser's knowledge is increased;

(12) demonstrate to the board that he/she is honest, trustworthy and competent;

(13) successfully complete a written examination on the New Mexico Real Estate Appraisers Act, administered by the board;

(14) pay the fee set out in 16.62.12.8 NMAC;

(15) meet the minimum criteria for the state residential certificate classification issued by the appraiser qualifications board (AQB) of the appraisal foundation;

(16) submit a duly made application to the board office.

D. Experience: applicants for state residential certification must have a minimum of 2,500 hours of experience in real property appraisal obtained during no fewer than twenty-four (24) months as defined in 16.62.1 NMAC, submitted on a form prescribed by the board and attested to by the supervising appraiser under whose supervision the experience was obtained.

[E. Upgrade in licensure.

~~(1) Moving up in licensure shall be subject to direct supervision by a supervising appraiser.~~

~~(2) The supervising appraiser shall be responsible for the training, guidance, and direct supervision of the licensed appraiser by:~~

~~(a) accepting responsibility for the appraisal report by signing and certifying the report complies with USPAP;~~

~~(b) reviewing and signing the residential certified appraisal report(s);~~

~~(c) personally inspecting each appraised property with the residential certified appraiser until the supervising appraiser determines the residential certified appraiser is competent, in accordance with the competency rule of the national uniform standards of professional appraisal practice (USPAP) for the property type;~~

~~(d) the residential certified appraiser is permitted to have more than one supervising appraiser;~~

~~(e) an appraisal log shall be maintained by the residential certified appraiser and the supervising appraiser jointly on the experience log as approved by the board.]~~

[10/1/97; 16.62.4.8 NMAC - Rn & A, 16 NMAC 62.4.8, 09/13/2004; A, 11/25/06; A, 06/13/08]

## NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.6 NMAC, Section 8, effective 06/13/08.

**16.62.6.8 EXAMINATION REQUIREMENTS:** All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed uniform state certifications/licensing examination or its equivalent.

~~[A- [RESERVED]]~~

~~[B-]A.~~ The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

~~B.~~ An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator, HPC 12C or its equivalent; the applicant gives or receives any kind of aid during the examination; or someone other than the applicant takes the test or attempts to take the test for the applicant.

~~C.~~ All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

~~[C-] D.~~ The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations which will require a score of 70 percent or more for a passing grade.

~~[D-] E.~~ The applicant must take the examination prescribed by the board at the time and place noted in the written authorization.

~~[E-] An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator. HPC 12C or its equivalent. All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.~~

~~F.~~ The applicant gives or receives any kind of aid during the examination.

~~G.~~ Someone other than the applicant takes the test or attempts to take the test for the applicant.]

[1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004; A, 06/13/08]

## NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.7 NMAC, Sections 10 and 15, effective 06/13/08.

**16.62.7.10 R E N E W A L PROCESS:**

A. A completed renewal application, accompanied by the required fee as defined in 16.62.12.8 NMAC and documentation of 28 hours of continuing education. Renewal applications must be post-marked or delivered to the board office on or before April 30 of the renewal year.

B. Deferrals may not be granted to credential holders, except in the case of individuals returning from active military duty. Licensees returning from active military duty may be placed in active status for a period of up to ~~[480]~~ 90 days pending completion of all continuing education requirements.

[10/1/97; 16.62.7.10 NMAC - Rn & A, 16 NMAC 62.7.10, 09/13/2004; A, 11/25/06; A, 06/13/08]

**16.62.7.15 CHANGE OF ADDRESS:**

An apprentice, license or certificate holder shall report ~~[immediately]~~ to the board in writing any change of business address. Failure to do so within 30 days is grounds for apprentice, license or certificate suspension.

[10/1/97; 16.62.7.15 NMAC - Rn & A, 16 NMAC 62.7.15, 09/13/2004; A, 06/13/08]

## NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.8 NMAC, the addition of Section 10, effective 06/13/08.

**16.62.8.10 [RESERVED] DISTANCE EDUCATION:**

Is defined as any education process based on the geographical separation of student and instructor. A distance education course offered over the internet or other distance learning modality is acceptable to meet class hour requirements if:

A. the course provides interaction; interaction is a reciprocal environment where the student has verbal or written communication with the instructor;

B. content approval is obtained from the appraiser qualifications board, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the commission on colleges, a regional or national accreditation associa-

tion, or by an accrediting agency that is recognized by the U.S. secretary of education; non-academic credit college courses provide by a college shall be approved by the appraiser qualifications board and state licensing jurisdiction; and

C. course delivery mechanism approval is obtained from one of the following sources:

(1) appraiser qualifications board approved organizations providing approval of course design and delivery;

(2) a college that qualifies for content approval in Subsection B above that awards academic credit for the distance education course; or

(3) a qualifying college for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

[3/14/00; 16.62.8.10 NMAC - Rn & Repealed, 16 NMAC 62.8.10, 09/13/2004; 16.62.8.10 NMAC - N, 06/13/08]

## NEW MEXICO REAL ESTATE APPRAISERS BOARD

This is an amendment to 16.62.15 NMAC, Section 10, effective 06/13/08.

**16.62.15.10 APPLICATION FOR REINSTATEMENT:** Upon receipt of written notice required in 16.62.15.9 NMAC, the board shall send to the retired appraiser, an application for reinstatement of the apprenticeship, license or certificate.

A. The application for the reinstatement of an apprentice, license or certificate shall provide space for the applicant to provide the board the following information:

- (1) the serial number of the former apprentice, license or certificate;
- (2) the full name of the applicant;
- (3) the date of the original issue;
- (4) the date of the applicant's retirement.

B. The application must be completed and returned to the board with a check or money order in an amount equivalent to all lapsed renewal fees. In addition, the applicant for reinstatement of apprenticeship, license or certificate must offer proof sufficient to satisfy the board that he/she has taken in the calendar year immediately preceding the application for reinstatement, a minimum of ~~[ten]~~ fourteen clock hours per year missed in refresher courses in addition to any hours of continuing education units the applicant might have been delinquent prior to retirement

C. Any appraiser who wishes reinstatement after retirement may

apply at any time. The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

D. No appraiser who has retired shall reactivate his/her practice until a new apprentice registration, license or certificate is received.

E. No application for retirement will be accepted if the appraiser is under investigation or facing disciplinary proceedings.

[3/15/00; 16.62.15.10 NMAC - Rn & A, 16 NMAC 62.15.10, 09/13/2004; A, 06/13/08]

**NEW MEXICO  
SECRETARY OF STATE**

**TITLE 12 TRADE, COMMERCE AND BANKING  
CHAPTER 9 NOTARIES PUBLIC  
PART 2 PERFORMING ELECTRONIC NOTARIAL ACTS**

**12.9.2.1 ISSUING AGENCY:**

Office of the Secretary of State.  
[12.9.2.1 NMAC - N, 5/30/2008]

**12.9.2.2 SCOPE:**

All notaries public who register to perform electronic notarial acts.  
[12.9.2.2 NMAC - N, 5/30/2008]

**12.9.2.3 STATUTORY AUTHORITY:**

14-9A-5 (C) NMSA 1978  
[12.9.2.3 NMAC - N, 5/30/2008]

**12.9.2.4 DURATION:**

Permanent.  
[12.9.2.4 NMAC - N, 5/30/2008]

**12.9.2.5 EFFECTIVE DATE:**

May 30, 2008 unless a later date is cited at the end of a section.  
[12.9.2.5 NMAC - N, 5/30/2008]

**12.9.2.6 OBJECTIVE:**

The objective of the rule is to establish standards, guidelines, procedures, fees and to define the duties and responsibilities for notaries public electing to perform electronic notarial acts. The office of the secretary of state recognizes that as technology has advanced financial institutions, mortgage lenders, government and businesses are turning to electronic documents in order to speed up communication and productivity.

[12.9.2.6 NMAC - N, 5/30/2008]

**12.9.2.7 DEFINITIONS:**

A. "Electronic" means

relating to technology having electrical, digital, magnetic, wireless, optical, electro-magnetic, or similar capabilities.

B. "Electronic document" means information that is created, generated, sent, communicated, received or stored by electronic means.

C. "Electronic notarial act" means an official act by a notary public on or involving an electronic document and using means authorized by the secretary of state.

D. "Electronically enabled notary public" means a notary public who has registered with the secretary of state the capability of performing electronic notarial acts.

E. "Electronic notary seal" and "official electronic seal" mean information within a notarized electronic document that includes the notary public's name, jurisdiction of appointment, commission expiration date and generally corresponds to data in notary public seals used on paper documents.

F. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document or record.

G. "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by a notary public and contains the notary public's electronic signature or official electronic seal, official title, commission expiration date, and any required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular electronic notarization.

H. "Notary electronic signature" means those forms of electronic signature, which have been approved by the secretary of state as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

I. "Physical appearance" and "appears before the notary" mean that the principal and the notary public are physically close enough to see, hear, communicate with and give documents to each other without reliance on electronic devices such as telephone, computers, video cameras or facsimile machines.

J. "Unique to the notary public" and "under the sole control" mean with respect to an electronic notarization that the signing device used to affix the electronic signature of the notary public and to render the official electronic seal information tamper-evident must be accessible by and attributable solely to the notary public to the exclusion of all other persons and

entities operating to effectuate the authorized electronic notarization.

K. "Acknowledgment" means a notarial act in which a person at a single time and place appears in person before the notary public and presents a document; is personally known to the notary public or identified by the notary through satisfactory evidence; and indicates to the notary public that the signature on the document was voluntarily affixed by the person for the purpose stated within the document and, if applicable, that the person had due authority to sign in a particular representative capacity.

L. "Affirmation" means a notarial act, that is legally equivalent to an oath and in which a person at a single time and place appears in person before the notary public; is personally known to the notary public or identified by the notary public through satisfactory evidence; and makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".

M. "Jurat" means a notarial act in which a person at a single time and place appears in person before the notary public and presents a document; is personally known to the notary public or identified by the notary public through satisfactory evidence; signs the document in the presence of the notary public that the person is voluntarily affixing his signature and vouching for the truthfulness or accuracy of the signed document.

[12.9.2.7 NMAC - N, 5/30/2008]

**12.9.2.8 PHYSICAL APPEARANCE REQUIREMENT:**

A. A notary public shall not perform an electronic notarial act if the document signer does not appear in person before the notary public at the time of notarization. Under no circumstance shall a notary public base identification merely upon familiarity with a signer's electronic signature or an electronic verification process that authenticates the signer's electronic signature when the signer is not in the physical presence of the notary public.

B. The methods for identifying document signers for an electronic notarization shall be the same as the methods required for a paper-based notarization.  
[12.9.2.8 NMAC - N, 5/30/2008]

**12.9.2.9 REGISTRATION REQUIREMENTS:**

A. Before performing any electronic notarial act(s), a notary public shall register the capability to notarize electronically with the secretary of state on a form prescribed by the secretary of state.

B. In registering the capa-

bility to perform electronic notarial acts, the notary public shall provide the following information to the secretary of state, notary processing unit:

(1) the applicant's name as currently commissioned and complete mailing address;

(2) the expiration date of the notary public's commission and signature of the commissioned notary;

(3) proof of successful completion of a course of instruction on electronic notarization offered through an educational provider approved by the United States department of education (ACCET) accrediting council for continuing education and training;

(4) the applicant's e-mail address;

(5) the description of the electronic technology or technologies to be used in attaching an electronic notarial certificate to an electronic document;

(6) the description of the electronic technology or technologies to be used in attaching the notary's electronic signature to the electronic document;

(7) an exemplar of the notary's electronic signature and the notary's official electronic seal, which shall contain the notary's name and any necessary instructions or techniques that allow the notary's electronic signature or official electronic seal to be read;

(8) the name, address and phone number of the vendor issuing the electronic notary seal; this vendor shall be registered in the state of New Mexico to transact business;

(9) the starting and expiration date of the device's term of registration and any revocations, annulment, or other premature termination of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

[12.9.2.9 NMAC - N, 5/30/2008]

**12.9.2.10 TYPES OF ELECTRONIC NOTARIAL ACTS:**

- A. acknowledgments
- B. jurats
- C. oaths or affirmations

[12.9.2.10 NMAC - N, 5/30/2008]

**12.9.2.11 FORM AND MANNER OF PERFORMING THE ELECTRONIC NOTARIAL ACT:**

A. When performing an electronic notarial act, a notary public shall apply an electronic signature, which shall be attached to or logically associated with the electronic document such that removal or alteration of such electronic signature is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the elec-

tronic notarial act.

B. When performing an electronic notarial act, a notary public shall complete an electronic notarial certificate, which shall be attached to or logically associated with the electronic document such that removal or alteration of the electronic notarial certificate is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.

C. The notary public's electronic signature is deemed to be reliable if the following requirements are met:

(1) it is unique to the notary public;

(2) it is capable of independent verification;

(3) it is retained under the notary public's sole control;

(4) it is attached to or logically associated with the electronic document, and

(5) it is linked to the data in such a manner that any subsequent alterations to the underlying document's electronic notarial certificate are detectable and may invalidate the electronic notarial act.

D. When performing an electronic notarial act, a notary public shall apply an electronic seal, when required by law, which shall be attached to or logically associated with the electronic document such that removal or alteration of such official electronic seal is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.

E. The notary public's electronic seal is deemed to be reliable if the following requirements are met:

(1) it is unique to the notary public,

(2) it is capable of independent verification,

(3) it is retained under the notary public's sole control,

(4) it is attached to or logically associated with the electronic document and

(5) it is linked to the data in such a manner that any subsequent alterations to the underlying document or electronic notarial certificate are detectable and may invalidate the electronic notarial act.

F. An electronic image of a seal need not accompany an electronic signature.

G. The notary public's electronic signature and with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

[12.9.2.11 NMAC - N, 5/30/2008]

**12.9.2.12 FEES:**

A. For acknowledgments, \$10.00

B. For jurats, \$10.00

C. For oaths or affirmations, \$10.00

D. An employer shall not establish fees for electronic notarial services that are in excess of those specified within this rule.

E. When performing an electronic notarial act, a notary public may charge the maximum fee specified in this section, charge less than the maximum fee or waive the fee.

[12.9.2.12 NMAC - N, 5/30/2008]

**12.9.2.13 CHANGE OF E-MAIL ADDRESS:**

Within five days after the change of an electronically enabled notary public's e-mail address, the notary shall electronically transmit to the secretary of state a notice of the change, signed with the notary official electronic signature.

[12.9.2.13 NMAC - N, 5/30/2008]

**12.9.2.14 LIABILITY, SANCTIONS AND REMEDIES RELATING TO IMPROPER ELECTRONIC NOTARIZATIONS:**

The liability, sanctions, and remedies for the improper performance of electronic notarial acts are the same as described in the New Mexico notary handbook.

[12.9.2.14 NMAC - N, 5/30/2008]

**12.9.2.15 VIOLATION BY PERSON NOT REGISTERED TO PERFORM ELECTRONIC NOTARIZATIONS:**

Performing an electronic notarization without registering with the secretary of state is subject to sanctions as described in the New Mexico notary public handbook.

[12.9.2.15 NMAC - N, 5/30/2008]

HISTORY OF 12.9.2 NMAC:

[RESERVED]

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**End of Adopted Rules Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

**2008**

<b>Volume XIX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
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