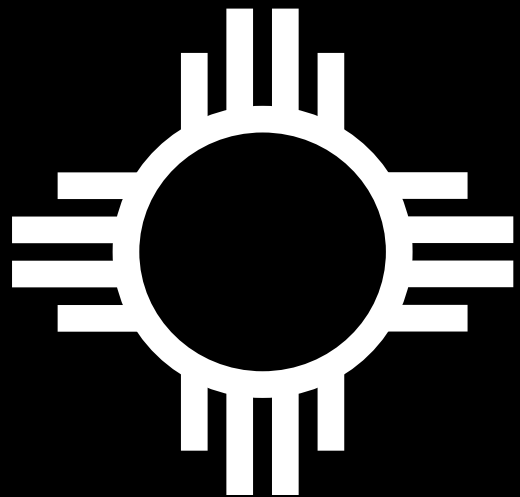


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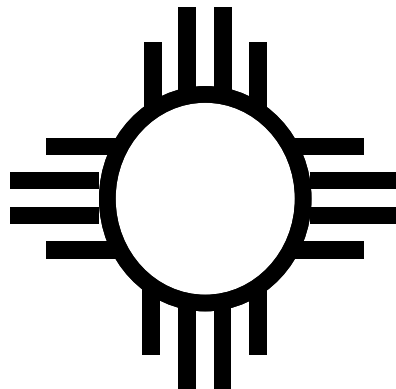


Volume XIX  
Issue Number 12  
June 30, 2008



# **New Mexico Register**

**Volume XIX, Issue Number 12  
June 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 12

June 30, 2008

## Table of Contents

### Notices of Rulemaking and Proposed Rules

<b>Albuquerque-Bernalillo County Air Quality Control Board</b>	
Notice of Hearings and Meeting. . . . .	413
<b>Cultural Affairs, Department of, and Museum Board of Regents</b>	
Notice; Public Hearing on Rulemaking (regarding 4.51.57 NMAC) . . . . .	414
<b>Finance and Administration, Department of Board of Finance</b>	
Notice of Board of Finance Rule (Capital Expenditures by State Educational Institutions). . . . .	414
Notice of Board of Finance Rule (Capitol Buildings Repair Fund) . . . . .	414
<b>General Services Department</b>	
Transportation Services Division	
Notice of Proposed Rulemaking. . . . .	415
<b>Mining Safety Board</b>	
Notice of Public Meeting and Hearing of the New Mexico Mining Safety Board . . . . .	415
<b>Public Regulation Commission</b>	
Insurance Division	
Notice of Hearing on Proposed Rulemaking and Procedural Order (regarding 13.4.7 NMAC) . . . . .	415

### Adopted Rules

#### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided 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.

***A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered***

<b>Accountancy Board, Public</b>			
16.60.1 NMAC	A	Public Accountants: General Provisions. . . . .	417
16.60.2 NMAC	A	Certified Public Accountant (CPA) Examination Requirements . . . . .	418
16.60.3 NMAC	A	Licensure and Continuing Professional Education Requirements . . . . .	421
16.60.4 NMAC	A	Firm Permit, Peer Review Requirements, and Business Name Prohibitions. . . . .	423
16.60.5 NMAC	A	Code of Professional Conduct . . . . .	425
<b>Chiropractic Examiners, Board of</b>			
16.4.12 NMAC	A	Classification of Chiropractic Licensure . . . . .	426
16.4.6 NMAC	Rn & A	Examinations. . . . .	426
<b>Dental Health Care, Board of</b>			
16.5.1 NMAC	A	Dentistry (Dentists, Dental Hygienists, Etc.): General Provisions . . . . .	426
16.5.4 NMAC	A	Emergency Licensure Provisions . . . . .	427
16.5.5 NMAC	A	Dentists, Fees . . . . .	427
16.5.7 NMAC	A	Dentists, Temporary Licensure . . . . .	428
16.5.8 NMAC	A	Dentists, Licensure by Credentials. . . . .	429
16.5.13 NMAC	A	Dentists, License Revocation for Non-Renewal . . . . .	429
16.5.15 NMAC	A	Dentists, Anesthesia Administration. . . . .	430
16.5.16 NMAC	A	Dentists, Disciplinary Proceedings. . . . .	430
16.5.18 NMAC	A	Dental Hygienists, Fees . . . . .	430
16.5.19 NMAC	A	Dental Hygienists, Licensure by Examination . . . . .	430
16.5.20 NMAC	A	Dental Hygienists, Licensure by Credentials . . . . .	431
16.5.26 NMAC	A	Dental Hygienists, License Revocation for Non-Renewal. . . . .	431
16.5.28 NMAC	A	Dental Hygienists, Local Anesthesia Certification. . . . .	431

16.5.30 NMAC	A	Dental Hygienists, Disciplinary Proceedings . . . . .	432
16.5.32 NMAC	A	Dental Assistants, Fees . . . . .	432
16.5.33 NMAC	A	Dental Assistants, Requirements for Certification . . . . .	432
16.5.37 NMAC	A	Dental Assistants, Certificate Revocation for Non-Renewal . . . . .	432
16.5.40 NMAC	A	Dental Assistants, Disciplinary Proceedings . . . . .	432
<b>Economic Development Department4</b>			
5.5.50 NMAC	A	Industrial Development Training Program . . . . .	433
<b>Environmental Improvement Board</b>			
7.18.2 NMAC	R	Public Swimming Pools, Spas, and Baths: General Provisions . . . . .	439
7.18.3 NMAC	R	Public Swimming Pools, Spas, and Baths: Design and Construction. . . . .	439
7.18.4 NMAC	R	Public Swimming Pools, Spas, and Baths: Maintenance and Operation Requirements . . . . .	439
7.18.5 NMAC	R	Public Swimming Pools, Spas, and Baths: Fees . . . . .	439
7.18.2 NMAC	N	Public Swimming Pools, Spas, and Baths: General Provisions . . . . .	439
7.18.3 NMAC	N	Public Swimming Pools, Spas, and Baths: Design and Construction. . . . .	447
7.18.4 NMAC	N	Public Swimming Pools, Spas, and Baths: Maintenance and Operation Requirements . . . . .	462
7.18.5 NMAC	N	Public Swimming Pools, Spas, and Baths: Fees . . . . .	468
<b>Game and Fish, Department of</b>			
19.30.8 NMAC	A	Guide and Outfitter Registration . . . . .	469
19.31.4 NMAC	A/E	Fisheries . . . . .	470
19.31.10 NMAC	A	Hunting and Fishing - Manner and Method of Taking. . . . .	471
<b>Gaming Control Board</b>			
15.1.5 NMAC	A	Application for Licensure Under the Gaming Control Act . . . . .	472
15.1.8 NMAC	A	Accounting Requirements Under the Gaming Control Act . . . . .	473
15.1.9 NMAC	A	Internal Control Minimum Standards for Gaming Devices Under the Gaming Control Act. . . . .	475
15.1.10 NMAC	A	Conduct of Gaming Activity Under the Gaming Control Act . . . . .	476
15.1.11 NMAC	A	List of Excluded Persons Under the Gaming Control Act. . . . .	479
15.1.14 NMAC	A	Enforcement Proceedings Under the Gaming Control Act . . . . .	480
15.1.19 NMAC	A	Payment of Winnings Over \$1,200.00 Under the Gaming Control Act . . . . .	480
<b>Human Services Department</b>			
Medical Assistance Division			
8.305.1 NMAC	A	Medicaid Managed Care: General Provisions . . . . .	480
8.305.3 NMAC	A	Contract Management. . . . .	484
8.305.4 NMAC	A	Managed Care Eligibility . . . . .	487
8.305.5 NMAC	A	Enrollment in Managed Care . . . . .	488
8.305.7 NMAC	A	Benefit Package . . . . .	489
8.305.8 NMAC	A	Quality Management. . . . .	492
8.305.11 NMAC	A	Reimbursement for Managed Care. . . . .	498
8.305.12 NMAC	A	MCO Member Grievance System . . . . .	500
8.305.16 NMAC	A	Client Transition of Care . . . . .	501
8.305.17 NMAC	A	Value Added Services . . . . .	502
8.315.5 NMAC	A	Assertive Community Treatment Services . . . . .	502
<b>Public Education Department</b>			
6.22.3 NMAC	R	Charter School Stimulus Fund . . . . .	505
6.30.7 NMAC	R	Dual Credit . . . . .	505
6.69.3 NMAC	R	Performance Evaluation Requirements for Administrators and Counselors. . . . .	505
6.30.7 NMAC	N	Dual Credit . . . . .	505
6.69.3 NMAC	N	Performance Evaluation Requirements for Administrators . . . . .	509
6.69.6 NMAC	N	Performance Evaluation Requirements for School Counselors. . . . .	511
6.69.7 NMAC	N	Performance Evaluation Requirements for Principals and Assistant Principals. . . . .	512
6.63.2 NMAC	A	Licensure for School Nurses, Grades Pre K-12 . . . . .	513
6.63.16 NMAC	A	Licensure for School Licensed Practical Nurses, Grades Pre K-12 . . . . .	513
6.80.4 NMAC	A	Charter School Application and Appeal Requirements . . . . .	515

---

<b>Public Records, Commission of</b>			
1.13.3 NMAC	R	Management of Electronic Records . . . . .	523
1.13.3 NMAC	N	Management of Electronic Records . . . . .	523
1.13.8 NMAC	N	New Mexico Office of the State Historian Service Learning Student Internship Program. . . . .	530
1.13.4 NMAC	A	Records Management Requirements for Electronic Messaging . . . . .	532
1.13.6 NMAC	A	New Mexico Historical Records Scholarship Program Guidelines . . . . .	532
1.13.10 NMAC	A	Records Custody, Access, Storage and Disposition . . . . .	533
<b>Public Regulation Commission</b>			
13.14.3 NMAC	A	Agency Agreements . . . . .	535
13.14.9 NMAC	A	General Rate Provisions . . . . .	536
17.9.572 NMAC	A	Renewable Energy for Electric Utilities. . . . .	537
<b>Workforce Solutions, Department of</b>			
11.1.4 NMAC	Rn & A	Wage and Hour and Employment of Children . . . . .	537

### Other Material Related to Administrative Law

<b>Agriculture, Department of</b>		
Public Meeting Notice . . . . .		541



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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 HEARINGS AND MEETING

On **August 13, 2008, at 5:30 PM**, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will resume three public hearings in the Vincent E. Griego Chambers (City Council/County Commission Chambers) of the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102. These hearings were initially opened on November 14, 2007, and testimony and exhibits were presented. However, a quorum was not present and so these hearings were recessed until December 12, 2007. However, outstanding issues precluded the conclusion of these hearings at the December meeting. The resumed hearings will address:

1. Proposal to adopt revisions to the "Section 309 Regional Haze State Implementation Plan Element: Albuquerque-Bernalillo County, NM"
2. Proposal to amend 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*. "NMAC" stands for New Mexico Administrative Code.
3. Proposal to incorporate an amended Regional Haze SIP and an amended 20.11.46 NMAC into the New Mexico State Implementation Plan for air quality (SIP).

The purpose of the first hearing is to receive testimony on proposed revisions to Bernalillo County's Regional Haze element for inclusion into the SIP. The Regional Haze SIP is required by federal mandate to develop strategies to improve visibility in Class I areas to natural visibility conditions by the year 2064. Class I areas are those designated as areas of special national or regional value from a natural, scenic, recreational, and/or historic perspective. These areas are the focus of federal visibility protection regulations, including the Regional Haze regulation. Across the country, Class I areas include such places as the Grand

Canyon, Yosemite, Mt. Rainier, and Yellowstone. Of the 156 mandatory federal Class I areas in the US, nine Class I areas are in New Mexico, including Carlsbad Caverns National Park, Bandelier National Monument, Bosque del Apache National Wildlife Refuge, the Gila Wilderness Area, and the San Pedro Parks Wilderness Area.

The Regional Haze SIP was first submitted pursuant to the U.S. EPA requirements published 7/1/99 as a Federal Register notice (FR Vol. 64, No. 126), and addressed requirements found in CFR Part 51, Appendix V relating to completeness of SIP submissions. This SIP was first presented at two public hearings before the Air Board on October 8, 2003 and November 12, 2003. The Air Board adopted their Regional Haze SIP on November 12, 2003.

However, since the first rule to address the type of visibility impairment known as Regional Haze was promulgated by EPA in 1999, it has been judicially challenged twice. On May 24, 2002, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating the Regional Haze Rule in part and sustaining it in part, based on a finding that EPA's prescribed methods for determining best available retrofit technology (BART) were inconsistent with the Clean Air Act (CAA). The suit was brought by American Corn Growers Association v. EPA, [291 F.3d 1 (DC Cir. 2002)]. EPA finalized a rule on July 6, 2005 addressing the court's ruling in this case [FR Vol. 70 No. 128 39104-39172]. On February 18, 2005, the U.S. Court of Appeals for the District of Columbia Circuit issued another ruling, in a suit brought by the Center for Energy and Economic Development (CEED) v. EPA, [398 F.3d 653(DC Cir. 2005)], granting a petition challenging provisions of the Regional Haze Rule governing an optional emissions trading program for certain western States and Tribes (the Western Regional Air Partnership (WRAP) *Annex Rule*). EPA published proposed regulations to revise the provisions of the Regional Haze Rule governing alternative trading programs, and to provide additional guidance on such programs in August 2005. EPA received several comments on the August 2005 proposal. This rule was finalized in the Federal Register on October 13, 2006 (Volume 71, Number 198). The proposed revisions included changes in response to the public comments, and became effective December 12, 2006. The aforementioned proposed SIP revisions address all these actions, as well as addressing comments received by EPA, Federal Land Managers and the public.

After the Regional Haze SIP hearing closes, another hearing will be held during which the Board will hear testimony on proposed revisions to 20.11.46 NMAC, *Sulfur Dioxide Emissions Inventory Requirements; Western Backstop Sulfur Dioxide Trading Program*. This regulation was first adopted by the Air Board in order to comply with the federal Clean Air Act and the associated EPA requirements of 40 CFR § 51.309 ("Section 309"). Section 309 of the federal Regional Haze Regulation establishes mandatory requirements that must be met by New Mexico's air quality implementation plan, including regional sulfur dioxide milestones, sulfur dioxide emissions tracking requirements and a backstop regional cap-and-trade program for sulfur dioxide. The current regulation includes emissions inventory requirements for tracking compliance with the sulfur dioxide milestones. The emissions inventory and tracking requirements for sulfur dioxide are included as enforceable provisions in the regulation. The current regulation contains the requirements that would apply to major industrial sources (100 tons or more per year), of sulfur dioxide emissions as a "backstop" regulatory program if specified sulfur dioxide milestones are ever exceeded. If the milestones are exceeded, numerous mandatory requirements of the current regulation will be triggered, including the procedures and compliance requirements for sources in the trading program. However, the mandatory provisions that will be triggered by exceeding the milestones may never be implemented if the goal of meeting the regional sulfur dioxide milestones through voluntary means is achieved. The proposed revisions address the changes necessitated by the aforementioned court rulings on the Regional Haze Rule.

The final hearing will address a proposal by the Environmental Health Department (Department) that the Air Board consider whether to authorize the submittal to EPA of an amended 'Section 309' Regional Haze SIP, and an amended 20.11.46 NMAC as proposed revisions to the SIP.

After the hearings close the Air Board is expected to convene its regular monthly meeting during which they will decide whether to adopt the proposed amendments to the Regional Haze SIP and amendments to 20.11.46 NMAC, and whether to incorporate these amendments into the SIP.

The Air Quality Control Board is the federally delegated air quality authority for Albuquerque and Bernalillo County. Federal, State, and local delegation author-

ize 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 any of these hearings is asked to submit a written notice of intent to testify (NOI) before 5:00pm on July 28, 2008 to: Attn: August Hearing Record, Mr. Neal Butt, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to 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 August 13, 2008 hearings should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on August 6, 2008. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [nbutt@cabq.gov](mailto:nbutt@cabq.gov) and shall include the required name and address information. Interested persons may obtain a copy of the proposed amendments at the Environmental Health Department Office, or by contacting Mr. Neal Butt electronically at [nbutt@cabq.gov](mailto:nbutt@cabq.gov) or by phone (505) 768-2660.

**NOTICE 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  
DEPARTMENT OF  
CULTURAL AFFAIRS  
AND  
MUSEUM BOARD OF  
REGENTS**

**NEW MEXICO DEPARTMENT OF  
CULTURAL AFFAIRS  
Palace of the Governors State History  
Museum Division  
and  
Museum of New Mexico Board of  
Regents**

**NOTICE**

Public Hearing on Rulemaking

Notice is hereby given, in conformance with § 9-4A-6(E) and § 18-3-3(M) NMSA 1978, that the Museum of New Mexico Board of Regents (MNM BoR), along with the Palace of the Governors State History Museum Division, Department of Cultural Affairs, (DCA) will be holding a public hearing on rulemaking at 9:00 A.M. on Thursday, July 22, 2008, at the Udall Museum Resources Building, Udall Conference Room, 725 Camino Lejo, Santa Fe, New Mexico. The purpose of the public hearing on rulemaking is to take comments on proposed amendments to Title 4, Chapter 51, Part 57, *Governing the Portal Program at the Palace of the Governors*, to better reflect current program needs. Interested persons may testify at the hearing or submit written comments on the proposed changes to Title 4, Chapter 51, Part 57, to DCA at 407 Galisteo St., Suite 260, Santa Fe, New Mexico, 87501, or via fax at (505) 827-4325. Written comments must be received no later than 5:00 P.M., July 16, 2008. Written comments will be given the same consideration as oral testimony at the public hearing. A copy of the proposed revisions to rule 4.51.57 NMAC may be obtained from the Palace of the Governors State History Museum Division, by calling (505) 476-5112 between 8:30 A.M. and 5:00 P.M., Monday through Friday, or by email to [Carlotta.Boettcher@state.nm.us](mailto:Carlotta.Boettcher@state.nm.us). If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact Carlotta Boettcher at (505) 476-5112. The MNM BoR and DCA request at least 10 days advance notice to provide requested alternative formats and special accommodations.

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION  
BOARD OF FINANCE**

NEW MEXICO  
DEPARTMENT OF FINANCE AND  
ADMINISTRATION

STATE BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE  
RULE

The State Board of Finance is in the process of revising one of its rules: Capital Expenditures by State Educational Institutions. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe NM 87501 and on the Board of Finance website, <http://board.nmdfa.state.nm.us>. The Board will consider adopting the proposed rule at its September 16, 2008 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Olivia Padilla-Jackson, 181 Bataan Memorial building, Santa Fe, NM 87501 by July 30, 2008.

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION  
BOARD OF FINANCE**

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DEPARTMENT OF FINANCE AND  
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STATE BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE  
RULE

The State Board of Finance is in the process of revising one of its rules: Capitol Buildings Repair Fund. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial building, Santa Fe NM 87501 and on the Board of Finance website, <http://board.nmdfa.state.nm.us>. The Board will consider adopting the proposed rule at its September 16, 2008 meeting, which takes place at 9:30 in the Governor's Cabinet Room, State Capitol building. Please mail or deliver written comments on the proposed changes to Olivia Padilla-Jackson, 181 Bataan Memorial building, Santa Fe, NM 87501 by July 30, 2008.

**NEW MEXICO GENERAL SERVICES DEPARTMENT**  
**TRANSPORTATION SERVICES DIVISION**

Notice of Proposed Rulemaking

The General Services Department (“GSD or Department”) hereby gives notice that the Department will conduct a public hearing as indicated to obtain input on amending the following rules:

1.5.3 NMAC Administration and Use of State Vehicles

A public hearing regarding the rules will be held on July 18, 2008 in the Bid Room located at the Joseph Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico. 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 Administration and Use of State Vehicles to Annette Roybal, State Central Fleet Authority, Bureau Chief, New Mexico General Services Department, P.O. Box 6850, Santa Fe, New Mexico 87502 or [annette.roybal@state.nm.us](mailto:annette.roybal@state.nm.us) (505) 476-1902, fax (505) 827-1905. Written comments must be received no later than 5:00 pm on July 14, 2008. The proposed rulemaking actions specific to the Transportation Services Division may be accessed on the Department’s website ([www.generalservices.com](http://www.generalservices.com)) or obtained from Annette Roybal 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 Annette Roybal as soon as possible. The Department requests at least ten days advanced notice to provide requested special accommodations.

**NEW MEXICO MINING SAFETY BOARD**

**New Mexico Mining Safety Board**

**Notice of Public Meeting and Hearing of the New Mexico Mining Safety Board**

The New Mexico Mining Safety Board (Board) will hold a public meeting beginning at 10:00 a.m. **Thursday, August 14, 2008** in the conference room of the New Mexico Bureau of Geology & Mineral Resources, located at 2808 Central Avenue SE, Albuquerque New Mexico.

During the meeting, the Mining Safety Board will conduct a public hearing on proposed rules for mining safety proposed by the Mining Safety Board. The Board will consider comment regarding rules for the fine structure for failure to report an accident and rules regarding coal mine officials’ certification. To view proposed rules, go to the State Mine Inspector’s homepage at <http://www.nmminesafety.com> . Copies of the proposed rule changes are also available from the New Mexico Bureau of Mine Safety, 801 Leroy Place, Socorro, NM 87801 or by calling 575-835-5460. At the conclusion of the hearing, the Mining Safety Board may deliberate and vote on the proposed rule changes.

A copy of the agenda for the meeting/hearing will be available at least 24 hours before the meeting and may be obtained by contacting the State Mine Inspector, Terence Foreback at 575-835-5460. 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 Terence Foreback at least 48 hours prior to the hearing. Public documents can be provided in various accessible forms. Please contact Terence Foreback if a summary or other type of accessible form is needed.

**NEW MEXICO PUBLIC REGULATION COMMISSION**  
**INSURANCE DIVISION**

BEFORE THE NEW MEXICO SUPERINTENDANT OF INSURANCE

IN THE MATTER OF A RULEMAKING )  
 PROCEEDING TO AMEND 13.4.7.2 NMAC )  
 RELATING TO CONTINUING EDUCATION ) Docket No. 08-00200-IN  
 RULES )  
 \_\_\_\_\_ )

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

THIS MATTER comes before the New Mexico Superintendent of Insurance (“Superintendent”) on his own motion pursuant to NMSA 1978, Sections 59A-2-9 and 59A-12-26, to consider amendments to 13.4.7.2(B)(5) NMAC (“rule”) to exclude from the application of the rule all non-resident agents and non-resident brokers who are licensed in another state or country without regard to whether such non-resident agents and brokers are otherwise subject to continuing education requirements in that foreign state or country. Specifically, the Superintendent proposes that the rule be amended to delete the following existing language: “...and who are subject to continuing education requirements in the state or country in which they are licensed.”

The purpose of the proposed amendment is to achieve the goal of compliance with the National Association of Insurance Commissioners (“NAIC”) 2002 reciprocity standard which is based upon the National Association of Registered Agents and Brokers (“NARAB”) Working Group’s interpretation of the NARAB provisions of the federal Gramm-Leach-Bliley Act as they pertain to continuing education requirements for non-resident agents and non-resident brokers. The effect of the proposed amendment is to exempt from the application of the rule all non-resident agents and non-resident brokers from the requirements of the rule. Under the existing rule such non-resident agents and non-resident brokers are exempt from the continuing education requirements under New Mexico law *if* they are licensed in another state or country *and* that state or country subjects them to continuing education requirements. Under the proposed amended rule, non-resident agents and non-resident brokers would be exempt from New Mexico’s continuing education requirement if they are simply licensed in another state or country.

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking be issued pursuant to NMSA 1978, Sections 59A-4-15, 59A-4-16, and 59A-2-9.

IT IS FURTHER ORDERED that an informal public hearing pursuant to NMSA 1978, Section 59A-4-18, shall be held on August 15, 2008, at 9:30 AM and continuing thereafter as necessary at the New Mexico Public Regulation Commission 4<sup>th</sup> Floor Hearing Room, 1120 Paseo de Peralta, Santa Fe, NM 87504 PERA Building, at the corner of Paseo de Peralta and Old Santa Fe Trail for the purpose of receiving oral public comments including data views or argument on the proposed amendment to the rule and written comment. 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 written comments, data, and/or exhibits on the proposed amendment to the rule and/or alternate proposed amendments, if any, shall be filed in this docket submitted on or before August 5, 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. A written copy of the proposed rule and filed written comments may also be obtained from the docketing office via the contact information listed below. An original and two copies of all proposals, comments, and other materials 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 Building, 1120 Paseo de Peralta, at the corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and may be contacted via mail or telephone at P.O. Box 1269, Santa Fe, NM, 87504-1269 or (505) 827-4526.

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, Section 59A-4-16, and other applicable law. PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act NMSA 1978, Section 2-11-1 et seq., regulates lobbying activity before state agencies, officers, boards, and commissions. 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 penalties for violation of its provisions. For more information and registration forms, contact the at Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM, 87503 or (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 the 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 be addressed to the Docketing Office.

DONE AND ORDERED this \_\_\_ day of June, 2008

Morris J. Chavez  
Superintendent of Insurance

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1 NMAC Sections 7, 10 and 11, effective 6-30-2008.

#### 16.60.1.7 DEFINITIONS:

**A. "Acceptance letter"** means a document issued by the administering entity indicating the type of report (unmodified, modified, or adverse) when all review documents and, if applicable, all remedial/corrective actions have been completed and accepted by the peer review committee.

**B. "Act"** means the New Mexico 1999 Public Accountancy Act, Sections 61-28B-1 to 61-28B-29 NMSA1978.

**C. "Administering entity"** means an entity (any form of organization allowed by state law or professional organization or association of CPA's) that has met, and at all relevant times continues to meet, the standards specified by the board for administering the review. The board shall periodically publish a list of administering entities that have applied for and received approval.

**D. "Client"** means the person or entity who retains a licensee for the performance of professional services.

**E. "Enterprise"** means any person or entity who retains a licensee for the performance of professional services.

**F. "Financial statements"** means statements and footnotes related thereto that purport to show an actual or anticipated financial position or results of operations, cash flow, or changes in financial position based on generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but it does not include incidental financial data included in management advisory service reports which support recommendations made to clients. In addition, it does not include tax returns and supporting schedules.

**G. "He, his, him"** means masculine pronouns when used herein also include the feminine and the neuter.

**H. "Holding out to the public as a permit holder or registered firm"** means the phrase "holding himself out to the public as a permit holder or registered firm" as used in the definition ~~of~~ "practice of public accountancy" in Section 3G of the act, and in these rules it means any representation of the fact that a certificate holder holds a permit or is a registered

firm in connection with the performance of, or an offer to perform, services for the public. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate, registration, or permit in connection with the professional services offered to be performed. For the purpose of this rule, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate, permit or firm registration, including without limitation the use of titles or legends on letterheads, business cards, office doors, advertisements, internet, email, or other electronic media.

**I. "Manager"** has, when used in these rules, the same meaning as the term "manager" in a limited liability company.

**J. "Member"** has, when used in these rules, the same meaning as the term "member" in a limited liability company.

**K. "Peer review"** means a program to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies.

**L. "Peer review committee"** means a committee comprised exclusively of CPAs practicing public accountancy and formed by an administering entity for the purpose of accepting peer review reports submitted by firms on peer review engagements.

**M. "Professional services"** means any service performed or offered to be performed by a licensee for a client in the course of the practice of public accountancy.

**N. "Public communication"** means a communication made in identical form to multiple persons or to the world at large, including but not limited to television, radio, motion pictures, newspaper, pamphlet, mass mailing, letterhead, business card, the internet, email or directory.

**O. "Quality review"** means an interchangeable term for peer review.

**P. "Report"** as defined in Section 61-28B3 ~~(C)~~ N of the act and in these rules includes forms of language which refers to financial statements, when such forms of language express or deny any assurance as to the reliability of the financial statements to which they refer. Among the possible sources of such forms of language are pronouncements by authoritative bodies describing the work that should be performed and the responsibilities that should be assumed for specified kinds of

professional engagements. In addition, these pronouncements prescribe the form of report that should be issued upon completion of such engagements. A form of report prescribed by such a pronouncement will ordinarily constitute a form of language which is conventionally understood as implying assurance and expertise. For this reason, as provided in Section 17B of the act, the term "report" includes the issuance of reports using the forms of language set out in the American institute of certified public accountants (AICPA) statement on standards for accounting and review services (SSARS) No. 1 as amended, modified, or superseded from time to time, for reports with respect to both "reviews" of financial statements, and also compilations of financial statements, as well as the forms of language for "special reports" set out in the AICPA's statement on auditing standards (SAS) No. 14, No. 35 and No. 62 as amended, modified, or superseded from time to time. These statements on standards are incorporated in the AICPA professional standards: code of professional conduct.

~~**Q. "Review or review program"** as defined in Section 61-28A-31 NMSA 1978 means the review conducted under the relevant program, whether peer review or quality review.]~~

**R. "Services involving accounting or auditing skills"** means "services involving accounting or auditing skills" as used in the definition of "practice of public accountancy" in Sections ~~3L and M~~ 3K and L of the act. It includes the provision of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

**S. "Statement of compliance"** means a certified statement from the human services department (HSD) stating that an applicant or licensee is in compliance with a judgment and order for support.

**T. "Statement of non-compliance"** means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[16.60.1.7 NMAC - Rp 16 NMAC 60.1.7 and 16 NMAC 60.11.7, 02-14-2002; A, 11-30-2007; A, 4-15-2008; A, 6-30-2008]

**16.60.1.10 FEES AND OBLIGATIONS:** Fees charged by the board shall be as follows.

**A.** Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination

administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

**B.** Initial examination qualification review under Section 27F of the act shall be \$75.

**C.** Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the act shall be \$50.

**D.** Certificate application under Section 27B of the act shall be: initial certificate, \$150; certificate renewal, \$100.

**E.** No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

**F.** Firm permit application or renewal fee under Section 27C of the act shall be \$45 for each firm, regardless of form of entity.

**G.** Firm permit renewal delinquency fee under Section 27C of the act shall be \$50 and includes all practitioners whose renewal applications are delinquent.

**H.** Certificate/license reinstatement fee under Section 27G of the act shall be \$175 plus the current year's renewal fee. No delinquency fee shall be assessed.

**I.** No fee shall be charged for firm permit reinstatement, and no delinquency fee shall be assessed; only the current year's renewal fee shall be assessed.

**J.** Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the act shall not exceed \$75 each occurrence.

**K.** Administrative fees for services under Section 27F shall be:

(1) list of certificate or permit holders, [~~\$ .25 per name or line item~~] \$250;

(2) duplicate or replacement certificate card or permit card, \$10 each;

(3) duplicate or replacement wall certificate, \$25 each;

(4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

(5) certificate application package for reciprocity and grade transfer candidates and replacement packages for by-examination candidates, \$20 each;

(6) copies of combined Accountancy Act and board rules, \$10 each;

(7) copies of records and documents, \$.25 per page;

(8) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

**L.** Fee for the transfer of

licensure or examination information to a third party under Section 27E of the act shall be \$20.

~~[M.] Fee for notification of intent to practice in New Mexico under Section 26 of the act shall be \$90.~~

~~[N.] M.~~ Fee for criminal history background check under Section 8.1 of the act shall be \$29.25.

~~[O.] N.~~ The board may waive charges as it deems appropriate.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 01-15-2004; A, 04-29-2005; A, 11-30-2007; A, 6-30-2008]

**16.60.1.11 PRESCRIBED FORMS:** All requests for licensure transactions and all documentation for licensure purposes must be made on prescribed forms.

**A.** PAB 1 - Application for a New Mexico CPA Certificate by Examination.

**B.** PAB 2 - Application for a New Mexico CPA Certificate by Grade Transfer.

**C.** PAB 3 - Application for a New Mexico CPA Certificate by Reciprocity.

**D.** PAB 4 - Application for Renewal of a Current New Mexico CPA Certificate.

**E.** PAB 5 - Application for Reinstatement of a Cancelled New Mexico CPA Certificate.

**F.** PAB 6 - Application for Change of Certificate Status.

**G.** PAB 7 - Application for Firm Permit.

**H.** PAB 8 - Firm Permit Renewal Application.

**I.** PAB 9 - Application for Reinstatement of an Expired Firm Permit.

~~[J.] PAB 10 - Notification of the Intent to Practice in the State of New Mexico Under the Provisions of Substantial Equivalency.~~

~~[K.] J.~~ PAB 11 - Interstate Exchange of Information Form.

~~[L.] K.~~ PAB 12 - Work Experience Verification Form.

~~[M.] L.~~ PAB 13 - Interstate Notification of Verifying CPA's License.

~~[N.] M.~~ PAB 14 - Report of Continuing Professional Education.

**N.** PAB 15 - Interstate Verification of Examination Scores.

[16.60.1.11 NMAC - N, 07-30-2004; A, 05-15-2006; A, 6-30-2008]

## NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.2 NMAC Sections 8, 9, 10, 11 and 12, effective 6-30-2008.

### 16.60.2.8 APPLICATION PROCEDURES:

**A.** The board may contract as its agent [~~CPA Examination Services (CPAES), the National Association of State Boards of Accountancy (NASBA), or the American Institute of Certified Public Accountants (AICPA)~~] CPA examination services (CPAES), the national association of state boards of accountancy (NASBA), or the American institute of certified public accountants (AICPA) or other entities it deems appropriate to undertake any aspects of examination development, delivery, administration, qualification, or application that the board considers necessary and appropriate in its oversight and administration of the [~~Uniform CPA Examination~~] uniform CPA examination.

**B.** Applicants for the CPA examination shall meet the [~~following requirements~~] requirements of Section 8 of the act and the provisions set forth in this rule.

~~[(1) Section 61-28B7 of the Act; (2) Section 61-28B8 of the Act (Effective July 1, 2004); and provisions set forth in this rule.~~

**C.** ~~For the current pencil and paper CPA examination, applications to take the certified public accountant examination must be made on board forms and filed with the board at least 60 days prior to scheduled and available examination dates. For the current pencil and paper examination, the application must be postmarked or hand delivered on or before March 1 for the May examination, and on or before September 1 for the November examination or the next business day if the specified dates fall on a weekend or holiday. For computer based CPA examination applications, application deadlines shall be specified on the board prescribed application forms.]~~

~~[D.] C.~~ An application will not be considered filed until all application/qualification fees and examination fees required by these rules and all required supporting documents have been received, including photographs, official transcripts, and proof that the applicant has completed the education requirement.

**[E.] D.** An applicant who fails to appear for the examination shall forfeit all fees charged for both the application and the examination.

**[F.] E.** Prospective applicants for the CPA examination shall demonstrate

to the board's satisfaction that all education requirements are met.

~~[G] E.~~ ~~For the computer-based examination, t]~~ The board or its designee shall forward notification of eligibility to NASBA's national candidate database.

~~[H] G.~~ Upon registering for any section of the ~~[computer based]~~ examination, an applicant must sit for that section of the examination within six months from the date on which he is deemed eligible to sit for that section.

[16.60.2.8 NMAC - Rp 16 NMAC 60.3.9.1, 16 NMAC 60.3.9.2, & 16 NMAC 60.3.9.3, 02-14-2002; A, 01-15-2004; A, 12-30-2004; A, 6-30-2008]

### 16.60.2.9 EDUCATION REQUIREMENTS:

A. ~~[Section 61-28B7 of the Act requires a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with 30 semester hours in accounting or auditing related subjects or their equivalent as determined by the board. After July 1, 2004, Section 61-28B8 of the Act requires an applicant to have completed at least 150 semester hours of college education, including a baccalaureate or higher degree or its equivalent conferred by a college or university acceptable to the board, the total educational program to include accounting or auditing related subjects or their equivalent, as determined by the board, of not fewer than 30 semester hours.] After July 1, 2008, Section 8C of the act requires an applicant for the uniform CPA examination to hold a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board, with 30 semester hours in accounting or the equivalent as determined by the board.~~

~~(1) An examination applicant who has completed a baccalaureate degree and 30 semester hours of credit in accounting and has applied to take the examination prior to July 1, 2004, and had been found eligible will not be required to attain 150 semester hours of credit unless all four parts of the computer based examination are not passed within an 18-month period.]~~

~~(2) Any course for which credit has been awarded by the university will be accepted toward meeting the 150-semester-hour requirement.]~~

B. After July 1, 2008, Section 8C of the act requires an applicant for a certificate to have at least 150 semester hours of college education or its equivalent earned at a college or university acceptable to the board. Any course for which credit has been awarded by the institution will be accepted toward meeting the 150-semester hour requirement.

~~[B] C.~~ The board will accept

not fewer than 30 semester hours of accounting or audit related courses (3 semester hours may be in business law), without repeat, from a board-recognized educational institution. The recognized educational institution must have accepted them for the purposes of obtaining a baccalaureate degree or equivalent, and they must be shown on an official transcript. ~~[At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of a transcript issuing institution.]~~

~~[C] D.~~ A prospective CPA examination or CPA certificate candidate is considered as graduating from an accredited college or university acceptable to the board if, at the time the educational institution grants the applicant's degree, it is accredited at the appropriate level as outlined in these rules. As used in these rules, "accreditation" refers to the process of quality control of the education process. There are 3 different levels of accreditation referred to in these rules, and the degree to which the board relies on accreditation differs according to the level at which the degree granting institution is accredited. In reviewing and evaluating a candidate's educational credentials, the board may rely on accreditation by an accrediting agency at 3 different levels.

~~[D] E.~~ Level 1 accreditation is associated with the four-year, degree-granting college or university itself. The institution must be accredited by 1 or more of the following board-recognized regional accrediting agencies (or successor agencies):

- (1) middle states association of colleges and secondary schools;
- (2) New England association of schools and colleges;
- (3) north central association of colleges and secondary schools;
- (4) northwest association of schools and colleges;
- (5) southern association of colleges and schools;
- (6) western states association of schools and colleges; and
- (7) accrediting council for independent colleges and schools.

~~[E] E.~~ Level 2 accreditation is associated with a business school or college of business. The unit must be accredited by the board, such as the American assembly of collegiate schools of business (AACSB), following a specific and comprehensive review of its faculty, resources, and curricula. In evaluating a candidate's credentials, the board may choose to rely on this accreditation as evidence that the institution's business school has met minimum overall standards of quality for such

schools.

~~[F] G.~~ Level 3 accreditation is associated with an accounting program or department. The program or department must be accredited by a national accreditation agency recognized by the board such as the AACSB. Accounting programs or departments accredited in this manner have met standards substantially higher and much more specific than those required for level 1 or level 2 accreditation. For level 3 accreditation, the accounting program or department must meet a stringent set of standards that addresses faculty credentials, student quality, physical facilities, and curricula. Graduates who submit transcripts from accredited accounting programs may be deemed to have met the board's specific accounting and business course requirements.

~~[G] H.~~ If an educational institution was not accredited at the time an applicant's degree was received but is so accredited at the time the application is filed with the board, the institution will be deemed to be accredited for the purposes of this rule provided that it:

(1) certifies that the applicant's total educational program would qualify the applicant for graduation with a baccalaureate degree during the time the institution has been accredited; and

(2) furnishes the board satisfactory proof, including college catalogue course numbers and descriptions, that the pre-accrediting courses used to qualify the applicant as an accounting major are substantially equivalent to post-accrediting courses.

~~[H] I.~~ If an applicant's degree was received at an accredited educational institution as defined in this rule, but the educational program which was used to qualify the applicant as an accounting major included courses taken at non-accredited institutions, either before or after graduation, such courses will be deemed to have been taken at the accredited institution from which applicant's degree was received, provided the accredited institution either:

(1) has accepted such courses by including them in its official transcript; or

(2) certifies to the board that it will accept such courses for credit toward graduation.

~~[H] J.~~ A graduate of a four-year, degree-granting institution not accredited at the time the applicant's degree was received or at the time the application was filed will be deemed to be a graduate of a four-year accredited educational institution if:

(1) a credentials evaluation service approved by the board certifies that the applicant's degree is equivalent to a degree from an accredited educational institution



defined in this rule; or if

(2) an accredited educational institution as defined in this rule accepts the applicant's non-accredited baccalaureate degree for admission to a graduate business degree program; the applicant satisfactorily completes at least 15 semester hours or the equivalent in post-baccalaureate education at the accredited educational institution, of which at least 9 semester hours, or the equivalent, shall be in accounting; and the accredited educational institution certifies that the applicant is in good standing for continuation in the graduate program or has maintained a grade point average in these courses that is necessary for graduation.

~~[J]~~ **K.** Advanced subjects completed to qualify under the above section may not be used to satisfy education requirements.

~~[K]~~ **L.** The board may provide a mechanism to recognize educational institutions that are not accredited at the institutional, business school, accounting program, or department level.

~~[L]~~ **M.** The accounting education concentration or equivalent contemplated by the ~~[A]~~ act shall consist of semester hours of credit earned as in a conventional college semester. Quarter hours will be converted by multiplying the quarter hours earned by two-thirds to determine semester hours earned. No more than 30 semester hours will be recognized for internships or life experience.

[16.60.2.9 NMAC - Rp 16 NMAC 60.3.8, 02-14-2002; A, 06-15-2004; A, 6-30-2008]

#### 16.60.2.10 EXAMINATION ADMINISTRATION:

**A.** Time and place of examination: ~~[For the current pencil and paper examination, notice of the time and place of the examination will be mailed at least 10 days prior to the date set for the examination to each candidate whose application to sit for the examination has been approved by the board. For the computer-based CPA examination, e]~~ Eligible applicants shall ~~[be notified of the time and place of the examination or shall]~~ independently contact ~~[the board or]~~ a test center operator identified by the board to schedule the time and place for the examination at an approved test site.

**B.** Examination subjects: The examination required by the ~~[A]~~ act shall test the knowledge and skills required for performance as an entry-level certified public accountant and shall include the subject areas of accounting and auditing and such related subjects as the board may require.

[16.60.2.10 NMAC - Rp 16 NMAC 60.3.9.3, 02-14-2002; A, 01-15-2004; A, 6-30-2008]

#### 16.60.2.11 ~~[PROCTORED EXAMINATION CANDIDATES (OUT-OF-STATE CANDIDATES)]~~

~~**A.** The board will accept candidates from other jurisdictions/states as out of state proctored candidates, or allow qualified New Mexico candidates to be proctored in other jurisdictions/states, only under the following situations:~~

~~(1) temporary change in residence to the proctoring jurisdiction/state while the candidate is a student;~~

~~(2) temporary change in residence to the proctoring jurisdiction/state while the candidate is on military duty;~~

~~(3) temporary change in residence to the proctoring jurisdiction/state while the candidate is on a temporary work assignment; or~~

~~(4) qualified New Mexico candidates who can demonstrate significantly reduced travel expense by being proctored in a contiguous jurisdiction/state.~~

~~**B.** The board may waive the above requirements due to hardship exceptions presented by a CPA examination candidate.]~~ **[RESERVED]**

[16.60.2.11 NMAC - N, 02-14-2002; Repealed, 6-30-2008]

#### 16.60.2.12 CPA EXAMINATION

**CHEATING:** Cheating by an applicant in applying for or taking the examination will be deemed to invalidate any grade otherwise earned by a candidate on any part of the examination and may warrant summary expulsion from the examination and disqualification from taking the examination for a specified number of subsequent sittings.

**A.** For purposes of this rule, the following actions, among others, may be considered cheating:

(1) falsifying or misrepresenting educational credentials or other information required for admission to the examination;

(2) communication between candidates inside or outside the examination room while the examination is in progress;

(3) communication with others outside the examination room while the examination is in progress;

(4) substitution of another person to sit in the examination room in the stead of a candidate and write one or more of the examination papers;

(5) possession of or reference to crib sheets, textbooks, electronic devices or other material inside or outside the examination room while the examination is in progress;

(6) copying or attempting to copy another candidate's answers;

(7) failure to cooperate with testing officials;

(8) any conduct that violates the standards of test administration or violates

the verbal or written instructions given by examination administrators; or

(9) bringing prohibited items into the examination site.

**B.** In any case where it appears to a member of the board or its representative, while the examination is in progress, that cheating has or is occurring, the board may ~~[either]~~ summarily expel the candidate involved from the examination. ~~[or move the candidate to a position in the room away from other candidates where the candidate can be watched more closely.]~~

**C.** In any case where the board believes that it has evidence that a candidate has cheated on the examination, and in every case where a candidate has been expelled from the examination, the board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and, if so, what remedy should be applied. In such hearings, the board shall decide:

(1) whether the candidate shall be given credit for ~~[any portion of the examination completed in that session]~~ the section of the examination completed in that testing session;

(2) whether the candidate shall be allowed to ~~[continue taking the examination in any additional sessions that remain]~~ take additional sections of the examination in that same testing window; and

(3) whether the candidate shall be barred from taking the examination in future ~~[sittings]~~ testing windows, and if so, for how many ~~[sittings]~~ testing windows.

**D.** In any case where the board permits a candidate to continue taking the examination, it may, depending on the circumstances:

(1) admonish the candidate; and

~~[(2) seat the candidate in a segregated location for the rest of the examination;~~

~~(3) keep a record of the candidate's seat location and identification number and the names and identification numbers of the candidates on either side of the candidate; and~~

~~(4) for the current paper and pencil examination, notify the American Institute of Certified Public Accountants (AICPA) of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved.~~

~~(5) upon introduction of the computer-based examination, notify the national candidate database, the AICPA, and the test center of the circumstances so that the candidate may be more closely monitored in future examinations.]~~

(2) notify the national candidate

database, the AICPA, and the test center of the circumstances so that the candidate may be more closely monitored in future examinations.

**E.** In any case where a candidate is refused credit for parts of the examination taken or is expelled from the examination or disqualified from taking other parts, the board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the board, with right of appeal, pursuant to the procedures provided in the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, and ~~in Section 7B of the Act, and after July 1, 2004,~~ Section 8B of the [A] act.

**F.** In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the board will provide information as to its findings and actions taken to the board of accountancy of any other state to which the candidate may apply for the examination. [16.60.2.12 NMAC - Rp 16 NMAC 60.3.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004; A, 6-30-2008]

## NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC Sections 9, 13 and 14, effective 6-30-2008.

### 16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:

**A.** An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

**B.** Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts.

**C.** Criminal history background check: Pursuant to Section 61-28B-8.1 of the act, all applicants for initial issuance or reinstatement of a certificate and license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) An applicant shall submit two completed fingerprint cards to the board

office with the initial application for licensure or the application for licensure reinstatement.

(2) Blank fingerprint cards shall be obtained from the board office.

(3) Fingerprints shall be taken:

(a) under the supervision of and certified by a New Mexico state police officer, a county sheriff, or a municipal chief of police;

(b) by comparable officers in the applicant's state of residence if the applicant is not a resident of New Mexico; or

(c) at the discretion of the board, by a private agency qualified to take and certify fingerprints, provided the agency submits to the board written authorization from any of the agencies referenced in Subparagraphs (a) and (b) above.

(4) Completed fingerprint cards shall be submitted to the board office with the prescribed fee.

(5) The board shall not issue a certificate or license until an applicant's background check has been successfully completed.

**D.** Education and examination requirements: Education and examination requirements are specified in ~~the act, Section 61-28B7 and Section 61-28B8 (After July 1, 2004)~~ Section 8 of the act and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

**E.** Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified by an active, licensed CPA as defined in the act or by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted:

(a) one year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above;

(b) experience documented in support of an initial application must be obtained within the 7 years immediately

preceding passing of the examination or within 7 years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(c) any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(d) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

**F.** Swearing in ceremony: Every new licensee must participate in a swearing in ceremony before the board within one year from the date of the issuance of the initial license. Swearing in ceremonies shall be held two times per year in locations to be determined by the board. Upon good cause presented in writing prior to the expiration of the one-year period of initial licensure, the board may extend the period for being sworn in or arrange an alternate method for the licensee to be sworn in. If an extension for good cause is granted, the licensee shall arrange with the board director to present him or herself for swearing in before the board within the time prescribed by the board. Failure to appear at a swearing in ceremony before the board may result in the imposition of a fine or other disciplinary action, as ~~deeded~~ deemed appropriate by the board.

**G.** Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

**H.** Renewal requirements: Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the CPA or RPA

certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 07-29-2005; A, 11-30-2007; A, 6-30-2008]

### **16.60.3.13 RECIPROcity REQUIREMENTS:**

**A.** Interstate Reciprocity: The board may issue a certificate/license to the holder of a certificate issued by a state other than New Mexico as defined under Sections 3[Q] Q, 11B and D, and 26A of the [A] act provided that the license from the other state is valid and in good standing and that the applicant:

(1) provides proof from a board-approved national qualifications service that their CPA qualifications are substantially equivalent to the CPA requirements of the act; or

(2) successfully completed the CPA examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate; and

(3) meets the experience requirements under the act and these rules for issuance of the initial certificate; and

(4) has met the CPE requirement of the state in which he is currently licensed pursuant to the act and board rules; and

(5) has passed either the American institute of certified public accountants ethics examination with a score of 90 percent or higher or an ethics examination of another state board of accountancy with a score of 90 percent or higher.

**B.** An applicant who holds a certificate from another state based upon passage of the examination but who does not hold a license to practice shall not be eligible for licensure by reciprocity.

**C.** The board may rely on the national association of state boards of accountancy (NASBA), the American institute of certified public accountants (AICPA), or other professional bodies

deemed acceptable to the board for evaluation of other state's CPA qualification requirements in making substantial equivalency determinations.

**D.** International reciprocity: The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a New Mexico CPA certificate and may issue a certificate/license to the holder of a professional accounting credential issued in a foreign country.

(1) The board may rely on NASBA, AICPA, or other professional bodies deemed acceptable to the board for evaluation of foreign credentials in making equivalency determinations.

(2) The board may satisfy itself through qualifying examination(s) that the holder of a foreign country credential deemed by the board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards and the board's rules. The board will specify the qualifying examination(s) and may rely on NASBA, AICPA, or other professional bodies to develop, administer, and grade such qualifying examination(s).

(3) The board recognizes the existence of the international qualifications appraisal board (IQAB), a joint body of NASBA and AICPA, which is charged with:

(a) evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

(b) negotiating principles of reciprocity agreements with the appropriate professional and governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

(4) The board shall honor the terms of all principles of reciprocity agreements issued by IQAB.

(5) The board recognizes the international uniform CPA qualification examination (IQEX), written and graded by AICPA, as a measure of professional competency satisfactory to obtain a New Mexico certificate by reciprocity.

(6) The board may accept a foreign country accounting credential in partial satisfaction of its certificate/license requirements if:

(a) the holder of the foreign country accounting credential meets the issuing body's education requirement and has passed the issuing body's examination used to qualify its own domestic candidates; and

(b) the foreign country credential is valid and in good standing at the time of application for a certificate/license.

(7) The board shall accept the following foreign credentials in partial satis-

faction of its certificate/license requirements:

(a) Canadian chartered accountant;

(b) Australian chartered accountant;

(c) Australian certified practising accountant;

(d) Mexican contador publicos certificado;

(e) chartered accountants in Ireland.

**E.** An applicant for renewal of a CPA certificate/license originally issued in reliance on a foreign country accounting credential shall:

(1) meet all board prescribed certificate/license renewal requirements; and

(2) present documentation from the foreign country accounting credential issuing body that the applicant's foreign country credential has not been suspended or revoked and is not the subject of a current investigation; and

(3) report any investigations undertaken or sanctions imposed by a foreign country credential body against the CPA's foreign country credential.

**F.** If the foreign country credential has lapsed, expired, or been cancelled, the applicant must present proof from the foreign country credentialing body that the certificate holder/licensee was not the subject of any disciplinary proceedings or investigations at the time the foreign country credential lapsed.

**G.** Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential by the foreign credentialing body shall be considered evidence of conduct reflecting adversely upon the CPA's fitness to retain the certificate and may be a basis for board action.

**H.** Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely on the CPA's fitness to retain a certificate/license and is a basis for board action.

**I.** The board shall notify the appropriate foreign country credentialing authorities of any sanctions imposed against a CPA. The board may participate in joint investigations with foreign country credentialing bodies and may rely on evidence supplied by such bodies in disciplinary hearings.

[16.60.3.13 NMAC - Rp 16 NMAC 60.4.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005; A, 6-30-2008]

**16.60.3.14 SUBSTANTIAL EQUIVALENCY/INTENT TO PRACTICE REQUIREMENTS:** [Pursuant to Section 26 of the act, a person whose principal place of business is not New Mexico

and who has a valid certificate/license as a certified public accountant from a state that the board approved qualification service has verified to be in substantial equivalence with the certified public accountant requirements and who has met the following conditions of the act shall be presumed to have qualifications substantially equivalent to New Mexico's requirements.]

[~~A.~~ The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.]

[~~B.~~ A person whose qualifications are deemed substantially equivalent shall submit a notification of intent to practice under substantial equivalency and include related fees. An individual practicing in New Mexico under substantial equivalency provisions shall:

(1) provide written notice to the board no later than 30 days after commencing practice in New Mexico;

(2) consent to personal and subject matter jurisdiction of the board;

(3) agree to full compliance with the act and related board rules; and

(4) consent to appointment of the state board of the state of their principal place of business as their agent, upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against it.]

[~~C.~~ As a condition of this practice privilege, an individual shall renew their notification of intent to practice every 12 months.]

[~~D.~~ The individual shall be subject to disciplinary action for any violation of the act or board rules committed in New Mexico.]

A. Effective July 1, 2008, a person whose principal place of business is not New Mexico and who has a valid certificate/license as a certified public accountant from another state shall be presumed to have qualifications substantially equivalent to New Mexico's requirements if the person meets the requirements of Section 26, Subsection A of the act.

B. The board may rely on NASBA, AICPA, or other professional bodies approved as acceptable to the board to provide qualification appraisal in determining whether an applicant's qualifications are substantially equivalent to New Mexico's requirements.

C. A person exercising the practice privilege afforded by Section 26 of the act shall be deemed to have:

(1) submitted to the personal and subject matter jurisdiction and disciplinary authority of the board;

(2) agreed to full compliance with the act and related board rules; and

(3) consented to appointment of the state board that issued the license as agent upon whom process may be served in an action or proceeding by the New Mexico public accountancy board against the licensee.

D. A person exercising the practice privilege afforded by Section 26 of the act shall cease offering or rendering professional attest services in New Mexico in the event the license from the state of the person's principal place of business is no longer valid.

E. An individual who qualifies for practice privileges pursuant to Section 26 of the act may offer or render professional services whether in person or by mail, telephone, or electronic means without the need to notify the board or remit a fee.

[~~E~~ F. Pursuant to the Uniform Accountancy Act, an individual entering into an engagement to provide professional services via a web site pursuant to Section 23 shall disclose, via any such web site, the individual's principal state of licensure, license number, and an address as a means for regulators and the public to contact the individual regarding complaints, questions, or regulatory compliance.

[16.60.3.14 NMAC - N, 02-14-2002; A, 07-30-2004; A, 07-29-2005; A, 6-30-2008]

## NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.4 NMAC Sections 8, 9, and 10, effective 6-30-2008.

### 16.60.4.8 FIRM PERMIT APPLICATION, RENEWAL, REINSTATEMENT AND NOTIFICATION REQUIREMENTS:

A. Pursuant to Sections 12B and 13A, B, [~~C, and F~~ E, F, and L of the [~~A~~] act, any CPA or RPA acting as the sole proprietor, partner, shareholder or member of a legal business entity who performs or offers to perform accountancy for a client or potential client by holding themselves out to the public must obtain a firm permit to be granted authority to practice public accountancy as a CPA or RPA firm. Pursuant to Section 13[~~F~~] I of the [~~A~~] act, each office of the firm within New Mexico must obtain a firm permit. All firm permit applications for initial issue, renewal, or reinstatement shall be made on board-prescribed forms and meet all information and fee requirements to be considered complete and filed with the board.

B. Renewal requirements: Deadline for receipt of firm permit renewal

applications is no later than 30 calendar days prior to the expiration date printed on the firm permit. Renewal applications shall be postmarked or hand-delivered no later than the last day of the month preceding the month of expiration or the next business day if the deadline falls on a weekend or holiday. The board shall mail firm permit renewal application forms to firm permit holders no less than 30 days prior to the renewal deadline date.

C. Reinstatement requirements:

(1) Reinstatement due to non-renewal/expiration: Requests to reinstate a firm permit that lapsed or expired as a result of non-renewal shall be made on board-prescribed forms and meet all board-prescribed requirements for reinstatement including the current year's renewal fee and peer review program requirements. This rule shall not apply to firms whose permits lapsed or expired for a period of 3 years or more.

(2) Reinstatement applications for relief from disciplinary penalties: A firm whose permit to practice has been subject to board disciplinary action may apply to the board for modification of the board action after completion of all requirements contained in the board's original order:

(a) the application shall be in writing and substantiate the reasons constituting good cause for the relief sought; and

(b) shall be accompanied by at least 2 supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since the board action was imposed.

D. Action by the board: An application pursuant to Section 21 of the [~~A~~] act will be processed by the board upon the basis of the application materials submitted, supplemented by such additional inquiries the board may require. At the board's discretion, a hearing may be held on an application following procedures the board may find suitable for the particular case.

(1) The board may impose appropriate terms and conditions for firm permit reinstatement or modification of board disciplinary action.

(2) In considering a reinstatement application, the board may consider:

(a) all activities of the applicant since the disciplinary penalty from which relief is sought was imposed;

(b) the offense for which the applicant was disciplined;

(c) the applicant's activities during the time the firm permit was in good standing;

(d) the applicant's rehabilitative efforts;

(e) restitution to damaged parties

in the matter for which the penalty was imposed; and

(f) the applicant's general reputation for trust and professional probity.

(3) No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.

**E.** Notification requirements: A firm registered pursuant to Section 13 of the [A] act shall file written notification with the board of any of the following events concerning the practice of public accountancy within this state within 30 days of occurrence:

(1) formation of a new firm;

(2) change in legal form or name of a firm;

(3) firm termination;

(4) establishment of a new branch office or the closing or change of address of a branch office in this state; or

(5) the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the act or these rules.

[16.60.4.8 NMAC - Rp 16 NMAC 60.4.11, 02-14-2002; A, 04-29-05; A, 05-15-2006; A, 6-30-2008]

#### **16.60.4.9 FIRM BUSINESS NAMES PROHIBITIONS:**

**A.** Misleading firm names: A firm name is misleading pursuant to Section 19 of the [A] act if, among other things, the firm name:

(1) Is not the lawful and registered name of the firm.

(2) Contains a misrepresentation of the facts.

(3) Indicates a character, quality or grade of service which is not based upon verifiable facts.

(4) Indicates a geographic area of service which is not based on verifiable facts.

(5) Is intended to or likely to create false or unjustified expectations of favorable results.

(6) Implies special expertise.

(7) Includes a non-owner firm employee or a non-CPA.

(8) Implies the existence of a corporation when the firm is not a corporation.

(9) Implies existence of a partnership when there is not a partnership (as in "Smith & Jones, CPA's").

(10) Includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm.

(11) However, names of one or more past partners or shareholders may be included in the firm name of a partnership or corporation or its successor, and a partner surviving the death or withdrawal of all

other partners may continue to practice under a partnership name for up to 2 years after becoming a sole practitioner.

**B.** Fictitious firm names: A fictitious CPA or RPA firm name (that is, one not consisting of the names of 1 or more present or former partners, members, or shareholders) may not be used by a CPA or RPA firm in the practice of public accountancy unless such name has been registered with and approved by the board as not being false or misleading.

**C.** Name of firm formed as a single member limited liability company (LLC): A firm which is organized as a single member LLC under the Limited Liability Company Act, Sections 53-19-1 to 53-19-74 NMSA 1978, or similar acts of other states may be required by the applicable LLC act to include the word "company" or "Co." in its name. For purposes of compliance with the act, the firm name shall not include more than one person's name and shall not include "and", "&" or a similar term with respect to "company" or "Co." in a manner which would imply that there was more than 1 owner of the firm.

[16.60.4.9 NMAC - Rp 16 NMAC 60.4.10, 02-14-2002; A, 6-30-2008]

#### **16.60.4.10 PEER REVIEW REQUIREMENTS:**

**A.** Participation: A firm seeking to obtain or renew a firm permit to engage in the practice of public accountancy in New Mexico must undergo a peer review at least once every 3 years beginning with initial firm permit application. Peer review program objectives are established pursuant to Section 13[F] L of the act to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. Emphasis is on education, including appropriate education programs or remedial procedures that may be recommended or required where reporting does not comply with appropriate professional standards.

(1) Firms contracting to perform audits of state agencies as defined in the Audit Act must also comply with peer review standards applicable to those audits.

(2) Participation is required of each firm registered with the board who performs accounting and auditing engagements, including but not limited to audits, reviews, compilations, attestations, forecasts, or projections.

**B.** Reporting to the board: Within 90 days from the scheduled due date of the peer review for those administered by state societies and 150 days for all others, the firm must submit a copy of the interim or conditional or final acceptance letter or any combination of the above from the administering entity. This must be accom-

panied by the letter of comments, the reviewer's report, and other supporting documentation as requested by the board.

(1) If within 90 days from the scheduled due date of the peer review for those administered by state societies and 150 days for all others the firm cannot provide the final acceptance letter, the firm must submit a letter to the board explaining its failure to comply. The board may take disciplinary action for failure to comply.

(2) Each holder of a board-issued firm permit shall schedule a review to commence no later than the end of their first year of operations. Firms applying for their initial permit with a current (within the 3 years preceding initial application) peer review acceptance letter may submit that year's acceptance letter in support of their initial application and shall then schedule and maintain a subsequent review for each successive 3-year review period thereafter.

(3) Upon completion of the scheduled peer review, each firm shall schedule and maintain subsequent reviews for each successive 3-year period thereafter. It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable completion and acceptance of the review within the requirement of each successive 3-year reporting period.

(4) The board, at its sole discretion, may grant any reasonable extensions that it deems necessary.

**C.** Peer review program standards:

(1) The board adopts the standards for performing and reporting on peer reviews or any successor standards for peer review promulgated by the American institute of certified public accountants (AICPA) as its minimum standards for review of practice firms. This shall not require a membership in any specific administering entity or the AICPA.

(2) Approved administering entities shall be AICPA, the national conference of CPA practitioners (NCCPAP), state CPA societies fully involved in the administration of the AICPA peer review program and such other entities which register with and are approved by the board on their adherence to the peer review minimum standards.

(3) The board may, for cause, revoke approval of an administering entity. [16.60.4.10 NMAC - Rp 16 NMAC 60.11.8 & 16 NMAC 60.11.9, 02-14-2002; A, 06-15-2004; A, 12-30-2005; A, 6-30-2008]

## NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.5 NMAC Section 11, effective 6-30-2008.

**16.60.5.11 RULES OF CONDUCT:** In addition to abiding by the AICPA [~~Code of Professional Conduct~~] code of professional conduct, New Mexico CPA/RPA certificate/license holders shall abide by the following board rules:

**A.** Rule 901 - Responses to board communications. An individual certificate/license or firm permit holder shall, when requested, substantively respond in writing to any communications from the board requesting a response within 30 days of the mailing of such communications by registered or certified mail to the last address furnished the board by the applicant, certificate or registration holder.

(1) Failure to respond substantively to written board communications or failure to furnish requested documentation and/or working papers constitutes conduct indicating lack of fitness to serve the public as a professional accountant.

(2) Each applicant, certificate or firm permit holder and each person required to be registered with the board under the act shall notify the board, in writing, of any and all changes in such person's mailing address and the effective date thereof within 30 days before or after such effective date.

~~**B.** Rule 902 - Reportable events. A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:~~

~~(1) Conviction or imposition of deferred adjudication of the licensee of any of the following: felony or any crime of which fraud or dishonesty is an element; and any crime related to the qualifications, functions, or duties of a RPA or CPA or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary.~~

~~(2) The cancellation, revocation, or suspension of a certificate; other authority to practice or refusal to renew a certificate or other authority to practice as a RPA or CPA by any state, foreign country or other jurisdiction; or~~

~~(3) The cancellation, revocation or suspension of the right to practice as a CPA or RPA before any governmental body, agency or other licensing agency.~~

~~The required report shall be signed by the licensee and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and~~

~~dates of occurrence of the reportable event. As used in this rule, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not actually imposed until all appeals are exhausted. Nothing in this rule imposes a duty upon any licensee to report to the [B] board the occurrence of any events set forth either by or against any other licensee.]~~

**B.** Rule 902 - Reportable events.

(1) A licensee shall report in writing to the board the occurrence of any of the following events within 30 days of the date the licensee had knowledge of these events:

(a) conviction or imposition of deferred adjudication of the licensee of any of the following: felony or any crime of which fraud or dishonesty is an element; and any crime related to the qualifications, functions, or duties of a RPA or CPA or to acts or activities in the course and scope of the practice of public accountancy or as a fiduciary;

(b) the cancellation, revocation, or suspension of a certificate; other authority to practice or refusal to renew a certificate or other authority to practice as a RPA or CPA by any state, foreign country or other jurisdiction; or

(c) the cancellation, revocation or suspension of the right to practice as a CPA or RPA before any governmental body, agency or other licensing agency.

(2) The required report shall be signed by the licensee and shall set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

As used in this rule, a conviction includes the initial plea, verdict, or finding of guilt, plea of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence may not actually imposed until all appeals are exhausted. Nothing in this rule imposes a duty upon any licensee to report to the board the occurrence of any events set forth either by or against any other licensee.

**C.** Rule 903 - Frivolous complaints.

An individual certificate/license or firm permit holder who, in writing to the board, accuses another certificate/license or firm permit holder of violating the act or board rules shall assist the board in any investigation and/or prosecution resulting from the written accusation. Failure to do so, such as not appearing to testify at a hearing or to produce requested documents necessary to the investigation or prosecution, without good

cause, is a violation of this rule.

**D.** Rule 904 - Compliance with the Parental Responsibility Act. If an applicant for a certificate/license or a CPA or RPA certificate/license or firm permit holder is identified by the [~~State of New Mexico Human Services Department~~] state of New Mexico human services department (HSD) as not in compliance with a judgment and order for support, the board shall: deny an application for a license; deny the renewal of a license; have grounds for suspension or revocation of a license; and shall initiate a notice of contemplated action under provisions of the Uniform Licensing Act.

(1) If an applicant or licensee disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensee should contact the HSD [~~Child Support Enforcement Division~~] child support enforcement division. An applicant or licensee can provide the board with a subsequent statement of compliance, which shall preclude the board from taking any action based solely on the prior statement of non-compliance from HSD.

(2) When a disciplinary action is taken under this section solely because the applicant or licensee is not in compliance with a judgment and order for support, the order shall state that the application or license shall be reinstated upon presentation of a subsequent statement of compliance. The board may also include any other conditions necessary to comply with board requirements for reapplications or reinstatement of lapsed licenses.

**E.** Rule 905 - Specialty designations. A CPA/RPA certificate/license holder may only represent a claim of special expertise through the use of "specialty designations" in conjunction with the CPA/RPA designation if the specialty designation is:

(1) consistent with designations prescribed by national or regional accreditation bodies offering the designations pursuant to a prescribed course of study, experience, or examination, and

(2) cannot be construed by the public or clients of the CPA/RPA practitioner to be a false fraudulent, misleading, or deceptive claim unsubstantiated by fact.

[16.60.5.11 - Rp 16 NMAC 60.7, 16 NMAC 60.9, and 16 NMAC 60.10, 02-14-2002; A, 6-30-2008]

## NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.12 NMAC, Section 8, effective 7/17/08.

### 16.4.12.8 LICENSURE STATUS:

A. There shall be two licensure statuses.

(1) Active. An active license entitles a chiropractic physician to engage in the practice of chiropractic by providing professional services to patients within the state of New Mexico. This status may be maintained by following the license renewal procedures as set forth in Subsection A of 16.4.9.8 NMAC and by payment of the required fee as set forth in Subparagraph (a) of Paragraph (2) of Subsection A of 16.4.1.13 NMAC.

(2) Inactive. An inactive license may be held by a chiropractic physician not engaging in the active practice of chiropractic in New Mexico. This status may be maintained by payment of the required fee as set forth in Subparagraph (b) of Paragraph (2) of Subsection A of 16.4.1.13 NMAC. Continuing education is not required while on inactive status. Inactive status will not be granted for a period of less than one year. The board may consider a petition by the licensee for early reinstatement due to undue hardship or special circumstances.

B. Change in licensure status - A change from one status to another shall require a written ~~[notice]~~ request to the board.

C. A change from inactive status to active status shall require a written ~~[reinstatement application to the board]~~ license renewal application sent by the board, fulfillment of the continuing education requirements for the year in which the applicant petitions for a change in status and payment of reinstatement of license fees, active renewal fees, impairment fees, and any late fees required by the board. Applicant must include in the application, evidence that applicant meets the current requirements for licensure. If the applicant has been on inactive license status and not been in active practice in another jurisdiction for two or more years and desires to return to active status, a competency test may be required in addition to any other materials deemed reasonably necessary to assure the public safety.

[11/16/97; 16.4.12.8 NMAC - Rn & A, 16 NMAC 4.12.8, 3/15/06; A, 07/17/08]

## NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

This is an amendment to 16.4.6 NMAC, Sections 5, 7 and 8, effective 7/17/08. This rule was also renumbered and reformatted to comply with current NMAC requirements.

**16.4.6.5 EFFECTIVE DATE:**  
November 16, 1997, unless a later date is cited at the end of a section ~~[or paragraph]~~. [11/16/97; 16.4.6.5 NMAC - Rn & A, 16 NMAC 4.6.5, 07/17/08]

**16.4.6.7 DEFINITIONS:**  
~~[Refer to part 1]~~ Refer to 16.4.1.7 NMAC. [11/16/97; 16.4.6.7 NMAC - Rn & A, 16 NMAC 4.6.7, 07/17/08]

**16.4.6.8 EXAMINATIONS:**  
The Chiropractic Physician Practice Act provides that the board shall examine candidates for licensure ~~[at least twice a year]~~ in the act of chiropractic adjusting, producers and methods as shall reveal the applicant's qualifications; provided that the board may waive the requirements for the board administered examination upon satisfactory completion of the examination conducted by the national board of chiropractic examiners. The board will accept successful completion of all parts of the examination conducted by the national board of chiropractic examiners.

A. ~~[An applicant applying for examination will be examined in the act of chiropractic adjusting, procedures and methods. The applicant will also be required to attend orientation as directed by the board and complete a jurisprudence questionnaire.]~~

B. ~~All completed applications must be filed with the board at least 45 days prior to the date of the examination.~~

C. ~~An application for examination shall remain in force for one calendar year.~~

D. ~~An applicant who fails to appear or who fails to pass may sit for the next scheduled examination provided all necessary fees are paid.~~

E. ~~An applicant who fails to appear or fails the examination within one calendar year may re-apply one more time for examination, paying all the necessary fees.~~

F. ~~An applicant after four attempts who is unsuccessful in passing the examination for licensure must show evidence of six months of additional education in clinical experience in a CCE accredited chiropractic college before reapplying for examination for licensure.] National boards: an applicant for licensure by examination~~

must have passed the national board exams I, II, III, and IV and physiotherapy conducted by the national board of chiropractic examiners with a passing score required by the national board of chiropractic examiners.

B. Jurisprudence exam: all licensure applicants must successfully pass the board's jurisprudence exam.

(1) The applicant will receive the jurisprudence examination with instructions from the board office after the board receives both the application and the application fees.

(2) To complete the jurisprudence examination, the applicant will use the statutes and rules and regulations of the board.

(3) The applicant must pass the jurisprudence exam with a minimum score of 75%.

(4) Applicants may retake the examination as many times necessary to achieve a passing grade.

[2/27/87, 11/16/97; 16.4.6.8 NMAC - Rn & A, 16 NMAC 4.6.8, 07/17/08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.1 NMAC Section 7, effective 07-17-08.

### 16.5.1.7 DEFINITIONS:

A. "Act" means the Dental Health Care Act, Sections 61-5A-1 through 61-5A-29, NMSA 1978.

B. "Authorization" means written or verbal permission from a dentist to a dental hygienist, dental assistant, or dental student to provide specific tests, treatments or regimes of care.

C. "Diagnosis" means the identification or determination of the nature or cause of disease or condition.

D. "Impaired Act" means the Impaired Dentists and Dental Hygienists Act, Sections 61-5B-1 through 61-5B-11, NMSA 1978.

E. "Jurisprudence exam" means the examination given over the laws, rules and regulations, which relate to the practice of dentistry, dental hygiene and dental assisting in the state of New Mexico.

F. "Licensee" means an individual who holds a valid license to practice dentistry or dental hygiene in New Mexico.

G. "Provider" means a provider of dental health care services, including but not limited to dentists, dental hygienists, and dental assistants.

H. "Supervising dentist" means a dentist that maintains the records of a patient, is responsible for their care, has

reviewed their current medical history and for purposes of authorization, has examined that patient within the previous eleven months or will examine that patient within 30 days of giving authorization.

I. "WREB" means the western regional examining board, which acts as the representative agent for the board and committee in providing written and clinical examinations to test the applicant's competence to practice in New Mexico.

J. "CRDTS" means the central regional dental testing service, a separate and independent entity not including any successor, which acts as a representative agent for the board and committee in providing written and clinical examinations to test the applicants competence to practice in New Mexico.

K. "Written authorization" means a signed and dated prescription from a supervising dentist to a dental hygienist to provide specific tests, treatments or regimes of care in a specified location for 30 days following the date of signature.

L. "Professional background service" means a board designated professional background service, which compiles background information regarding an applicant from multiple sources.

M. "Non-dentist owner" means an individual not licensed as a dentist in New Mexico or a corporate entity not owned by a majority interest of a New Mexico licensed dentist that employs or contracts with a dentist or dental hygienist to provide dental or dental hygiene services and that does not meet an exemption status as detailed in 61-5A-5 G, NMSA 1978. [3-11-89, 5-31-95, 9-30-96, 12-15-97; 16.5.1.7 NMAC - Rn, 16 NMAC 5.1.7, 12-14-00; A, 06-14-01; A, 03-29-02; A, 03-06-05; A, 07-16-07; A, 07-17-08]

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

This is an amendment to 16.5.4 NMAC Section 8, effective 07-17-08.

**16.5.4.8 REQUIREMENTS FOR EMERGENCY LICENSURE:**

A. Dentists, dental hygienists and dental assistants 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 New Mexico during the four [(4)] months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy

of a drivers license, passport or other photo identification issued by a governmental entity;

(2) licensing qualifications and documentation requirements 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC for dentists, 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC for dental hygienists and 16.5.33 NMAC for dental assistants;

(3) other required information [and/or] and documentation will be the name and address of employer, copy of diploma, copy of current active license in good standing in another state, or verification of licensure, copy of DEA license if applicable; a license will not be granted without a practice location; the board will query the national practitioners databank, American association of dental examiners and other state dental boards where the practitioner has ever held a license; if any or all of this information [and/or] or documents are not available or destroyed in a disaster, an affidavit certifying this will be required.

B. The board may waive the following requirements for licensure:

- (1) application fee;
- (2) background check by a professional background information service; and
- (3) transcripts from an ADA accredited program.

C. The board may waive the specific forms required under the requirements for licensure if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Nothing in this section shall constitute a waiver of the requirements for licensure for dentists as required in 16.5.6 NMAC, 16.5.7 NMAC, 16.5.8 NMAC; dental hygienists as required in 16.5.19 NMAC, 16.5.20 NMAC, 16.5.21 NMAC; and dental assistants as required in 16.5.33 NMAC.

E. Licenses issued under the emergency provision shall expire four [(4)] months, following the date of issue, unless the board or an agent of the board approves a renewal application. Application for renewal shall be made [thirty] 30 days prior to the date of expiration and may be renewed no more than once. The applicant must obtain a permanent or temporary license within eight [(8)] months of the issuance of the initial emergency license. The board reserves the right to request additional documentation, including but not limited to recommendation forms and work experience verification forms prior to approving license renewal. The board will renew an emergency license for a period of four [(4)] months for the following renewal fees:

- (1) dentists \$100.00 emer-

gency license renewal fee;  
 (2) dental hygienists 50.00  
 emergency license renewal fee;  
 (3) dental assistants 10.00  
 emergency license renewal fee.

F. Licensees issued a license under the emergency provision are subject to all provisions of the Dental Health Care Act, Article 5A and the rules and regulations, Title 16 Chapter 5, specifically the disciplinary proceedings NMSA 1978 Section 61-5A-21. [16.5.4.8 NMAC - N, 04/17/06; A, 07/16/07; A, 07/17/08]

**NEW MEXICO BOARD OF DENTAL HEALTH CARE**

This is an amendment to 16.5.5 NMAC Section 8, effective 07-17-08.

**16.5.5.8 FEES:**

- A. All fees are non-refundable.
- B. Application for licensure by examination fee is \$500, which includes the initial licensing period.
- C. Application for licensure by credential fee is \$750, which includes the initial licensing period.
- D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$100 to re-take the exam.
- E. Triennial renewal fee for all dental licensees is \$450.
  - (1) Impaired fee is \$30 per triennial renewal period plus renewal fee.
  - (2) Late renewal fee of \$100 after July 1 through September 1 plus renewal and impaired fees.
  - (3) Cumulative late fee of \$10 per day from August 1 to the date of the post-mark or hand-delivery to the board office plus renewal, late and impaired fees.
- F. Triennial renewal fee for inactive license is \$90.
- G. Temporary license fees:
  - (1) forty-eight hour license, application fee of \$50, license fee of \$50;
  - (2) six month license, application fee of \$100, license fee of \$200;
  - (3) twelve month license, application fee of \$100, license fee of \$300.
- H. Anesthesia permit fees:
  - (1) nitrous oxide permit fee is \$25;
  - (2) conscious sedation I permit fee is \$25;
  - (3) conscious sedation II permit fee is \$300;
  - (4) deep sedation and general anesthesia permit fee is \$300.
- I. Reinstatement fee is \$400.



J. Application for licensure for inactive status is \$50.

K. Non-dentist owner fees.

(1) Application for licensure fee is \$300, which includes the initial licensing period.

(2) Triennial renewal fee of \$150.

(3) Late renewal fee of \$100 after July 1 through September 1 plus renewal fee.

(4) Cumulative late fee of \$10 per day from August 1 to the date of the post-mark or hand-delivery to the board office plus renewal and late fee.

L. Administrative and duplication fees:

(1) duplicate license fee is \$25;

(2) multiple copies of the statute or rules are \$10 each;

(3) copy fees are [~~\$0.50~~] \$0.25 per page [~~with a minimum charge of \$5.00~~];

(4) list of current dental licensees is \$250; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) mailing labels of current dental licensees is \$300.

[10-21-70, 3-14-73, 4-11-81, 3-7-88, 4-12-92, 3-16-94, 5-31-95, 9-30-96, 12-15-97, 5-28-99, 8-16-99; 16.5.5.8 NMAC - Rn & A, 16 NMAC 5.5.8, 06-14-01; A, 5-31-02, A, 03-06-05; A, 04-17-06 A, 07-16-07; A, 07-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.7 NMAC Sections 8 and 9, effective 07-17-08.

**16.5.7.8 CATEGORIES OF TEMPORARY LICENSES:** Applications for a temporary New Mexico dental license may be issued in the following categories for specific purposes if education and experience requirements are met:

A. Clinical educator. Dentists, not currently licensed in New Mexico, who provide clinical education or training that includes demonstrations on live subjects must apply for temporary licensure. The temporary license is issued for [~~forty-eight~~] 48 hours [~~(two days)~~]; if the course lasts longer than two days, additional [~~forty-eight~~] 48 hour licenses may be requested upon payment of the applicable fees; a temporary license may not be issued for less than [~~forty-eight~~] 48 hours.

B. A student who is enrolled in an ADA accredited dental specialty program or an ADA accredited general practice dental residency program, or an advanced education in general dentistry program, who holds a current, valid license in good standing in another US jurisdiction,

may be granted a temporary 48 hour license for the purpose of observing [~~and/or~~] or assisting a licensed New Mexico practitioner in cases for educational purposes. If the resident or student is enrolled in an accredited program in the state of New Mexico and holds a current, valid license in good standing in another US jurisdiction, they may be granted a temporary license for up to 12 months. This temporary license may be renewed annually only for purposes of completing the educational program.

C. Clinical practice in underserved area or state institutions. A dentist may be granted temporary licensure to practice in a state institution, a program approved or maintained by the New Mexico Department of Health (NMDOH), or a program or clinic designated by the New Mexico department of health (NMDOH), as dental care underserved area. (DCUA). The New Mexico department of health (NMDOH) may recommend to the New Mexico board of dental health care, counties, communities, county census divisions, or in the case of urban areas, neighborhoods, zip codes, and census tracts to be considered as dental care underserved areas (DCUA's). Areas recommended as DCUA's may reflect those areas designated by the federal government as dental health professional shortage areas (DHPSA). The New Mexico board of dental health care will request annually from NMDOH a written report of which areas are recommended as DCUA's and will update the listing throughout the year as appropriate. The New Mexico board of dental health care may designate DCUA's based upon these recommendations:

(1) the temporary license holder is restricted to work exclusively in the institution or program named on the application or the temporary license certificate;

(2) a temporary license for clinical practice in an under served area or state institution is valid for twelve months and shall expire at the end of that period; the board may re-issue the temporary license for three additional twelve-month periods; each license reissue must be approved by the board;

(3) the New Mexico board of dental health care shall rely upon the listing of recommended practices in underserved areas or state institutions, and the listing of recommended DCUA's provided by NMDOH in its review of applications for clinical practice in underserved areas; temporary licenses will be reissued only for sites and DCUA's that remain on the recommended listings by the New Mexico department of health;

(4) A temporary license to practice in an underserved area may be converted to a license by credentials provided the applicant:

(a) meets all requisite requirements listed in 16.5.8 NMAC and provides all documentation as required in 16.5.8.10 NMAC of these rules, with exception of the requirement to have a license in good standing for 5 years;

(b) practices for at least 1000 hours per year under a temporary license in an underserved area for three consecutive years. One year of credit will be granted for;

(i) an ADA accredited residency or ADA recognized specialty program; or

(ii) private practice of 1000 or more hours per year; and

(c) has no complaints under board investigation, actions pending or actions taken against the applicant's temporary license;

(d) has renewed the temporary license yearly, and has paid the required license fees;

(e) has maintained the same continuing education requirements of regularly licensed dentists as set forth in 16.5.10 NMAC of these rules. The annual continuing education requirements are to be based upon 1/3 prorata share of those required of a licensee applying for license renewal on a triennial basis; and

(f) applies for conversion of a temporary license to a license by credentials pursuant to 16.5.7.15 NMAC of these rules.

D. Emergency practitioner. Out of state specialists needed for emergency care in a hospital may be granted a temporary license:

(1) the information normally given in official documentation may be given in written or verbal form because of the emergency nature of the license;

(2) this category will be given a [~~forty-eight~~] 48 hour temporary license but it may be extended in forty-eight hour increments until the dentist can leave the patient to the care of others; and

(3) the New Mexico licensed dentist acting as the sponsor for the temporary licensee must be responsible for the validity of the following credentials:

(a) the license number in the state in which the applicant resides and practices, and the current status of the license;

(b) proof of liability insurance; and

(c) verification of status of hospital credentials in state of residence [~~and/or~~] or practice.

E. Replacement practitioner. A dentist may be granted temporary licensure for six or twelve months to work exclusively with patients in the practice of a New Mexico licensed dentist who is unable to practice dentistry because of physical or mental illness, injury, pregnancy, impairment, physical absence, or other condition

approved by the Board:

(1) the temporary license holder is restricted to work exclusively in the practice named on the application; and

(2) a temporary license as a replacement practitioner is valid for no longer than ~~[twelve]~~ 12 months, and may not be re-issued. [3-17-73, 3-16-94, 4-15-94, 5-31-95, 9-30-96; 16.5.7.8 NMAC - Rn & A, 16 NMAC 5.7.8, 12-14-00; A, 3-29-02; A, 07-17-08]

**16.5.7.9 PREREQUISITE REQUIREMENTS FOR TEMPORARY LICENSURE:** Each applicant for temporary licensure must possess the following qualifications:

A. graduated and received a diploma from an accredited dental school or college as defined in 61-5A-12, A;

B. if the temporary license is for a practice specialty, the applicant must have obtained a postgraduate degree or certificate from an accredited dental college, school of dentistry or other residency program that is accredited by the American dental association commission on dental accreditation;

C. hold a valid license in good standing from another state or territory of the United States;

D. applicants requesting a six or twelve month temporary license must pass the jurisprudence exam with a score of at least a 75 percentile;

E. for those applying for a initial temporary license in public health dentistry or as a replacement practitioner, the board requires a level III background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fee directly to a board designated professional background service to initiate this service; the license may be provisionally issued while awaiting the report from a board designated professional background service.

[3-14-73, 5-31-95; 16.5.7.9 NMAC - Rn & A, 16 NMAC 5.7.9, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.8 NMAC Section 8 and 9, effective 07-17-08.

**16.5.8.8 PREREQUISITE REQUIREMENTS FOR LICENSURE IN GENERAL PRACTICE:** Each applicant for licensure as a general dentist by credentials must possess the following qualifications:

A. graduated and received

a diploma from an accredited dental school as defined in 61-5A-12,A;

B. completed ~~[sixty]~~ 60 hours of approved continuing education during the past ~~[thirty-six]~~ 36 months in compliance with Section 16.5.1.15 NMAC of these rules;

C. passed the dental national board examination as defined in Section 61-5A-12,A;

D. passed the jurisprudence exam with a score of at least 75 percentile;

E. holds a ~~[valid license]~~ current active license in good standing by clinical examination in another state or territory of the United States, or has maintained a uniform service practice in the United States military or public health service for three years immediately preceding the application;

F. the board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules;

G. the board requires a level II background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service. [3-16-94, 8-15-95, 9-30-96, 1-1-99, 8-16-99; 16.5.8.8 NMAC - Rn & A, 16 NMAC 5.8.8, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08]

**16.5.8.9 PREREQUISITE REQUIREMENTS FOR LICENSE IN SPECIALTY PRACTICE:** Each applicant for a license to practice a dental specialty by credentials must possess the following qualifications. Individuals licensed to practice a dental specialty shall be limited to practice only in that specialty area.

A. Graduated and received a diploma from an accredited dental school as defined in 61-5A-12,A.

B. Have a postgraduate degree or certificate from an accredited dental school or approved residency program as defined in 61-5A-12,D, in one of the specialty areas of dentistry recognized by the ADA.

C. Completed ~~[sixty]~~ 60 hours of continuing education during the past ~~[thirty-six]~~ 36 months in compliance with Section 16.5.1.15 NMAC of these

rules.

D. Successfully completed the dental national board examination as defined in Section 61-5A-12,A.

E. Successfully completed an examination for diplomat status or a specialty licensure examination comparable to the specialty exam recognized by the New Mexico board of dental health care:

(1) the examination must include the entry level clinical skills in one of the following specialties: endodontics, oral and maxillofacial surgery, orthodontics/dento-facial orthopedics, oral pathology, pediatric dentistry, periodontology, prosthodontics; or oral and maxillofacial radiology; or

(2) for licensure as a specialist in dental public health, the applicant must have successfully completed the examination for diplomat status given by the American board of public health dentistry.

F. Completed the jurisprudence exam with a score of at least 75 percent.

G. Hold a ~~[valid license]~~ current active license in good standing by examination in another state or territory of the United States.

H. The board may deny, stipulate, or otherwise limit a license if it is determined the applicant holds or has held a license in another jurisdiction that is not in good standing, if proceedings are pending against the applicant in another jurisdiction, or information is received indicating the applicant is of danger to patients or is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules.

I. The board requires a level II background status report from a board designated professional background service. Application for this service will be included with other application materials. The applicant will apply and pay fees directly to a board designated professional background service to initiate this service. [3-16-94, 8-15-95, 9-30-96, 8-16-99, 06-13-01; 16.5.8.9 NMAC - Rn, 16 NMAC 5.8.9, 12-14-00; A, 06-14-01; A, 07-16-07; A, 07-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.13 NMAC Section 8, effective 07-17-08.

**16.5.13.8 REVOCATION OF LICENSE FOR NON-RENEWAL:** Unless an application for license renewal is received by the board office, or post-marked, before September 1, the license shall be revoked for non-renewal. [3/14/73, 5/31/95; 16.5.13.8 NMAC - Rn, 16 NMAC 5.13.8, 04/17/06; A, 07/17/08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.15 NMAC Section 15, effective 07-17-08.

### 16.5.15.15 PERMIT APPLICATION PROCEDURE:

A. Applications may be obtained from the board office. The completed application, accompanied by the required permit fee as defined in 16.5.5 NMAC, is forwarded to the anesthesia committee for evaluation.

B. Temporary permits: The anesthesia committee evaluates the application and identifies any additional information required. If the application appears to be in order, the anesthesia committee may recommend the board issue a temporary permit. Temporary permits allow time to complete processing of the application, administer the examination and inspect the facility.

(1) A dentist having a valid temporary dental license in good standing may apply for a CSI, CSII and deep sedation temporary anesthesia permit not to exceed the term of the first temporary license. After receipt of proper documentation, and at the discretion of the anesthesia committee or anesthesia designator, the application may be approved by the board at the next regular scheduled meeting.

(2) The temporary permit shall not be valid for more than 12 months.

(3) The permit application fee includes the cost of the temporary permit and the initial permit.

(4) A temporary permit shall be revoked by the board on the following grounds:

(a) the applicant fails the anesthesia committee's examination;

(b) the applicant is found to be practicing outside the recognized standard of care in regard to administration of anesthesia;

(c) or the applicant fails to cooperate with the timely scheduling of the examination and facility inspection.

C. Examination/evaluation: The anesthesia committee will schedule the examination and facility inspection, when required, with the applicant. The anesthesia committee uses the American association of oral and maxillofacial surgeons office anesthesia evaluation manual as a guide for the examinations. Incomplete applications will be returned by the anesthesia committee to the board office with a clear indication of the deficient areas.

D. Final approval: After final evaluation of the application and examination results, the anesthesia committee recommends final action on the applica-

tion to the board. The board makes the final determination on approval of the permit. If an application is denied for failure to meet the requirements of 16.5.15.10 NMAC of this part, the areas of non-compliance will be identified and the applicant may re-apply when the requirements are met.

[16.5.15.15 NMAC - Rp, 16.5.15.15 NMAC, 3-17-05; A, 07-16-07; A, 07-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.16 NMAC Section 11, effective 07-17-08.

### 16.5.16.11 INVESTIGATIVE

**SUBPOENAS:** The complaint committee of the board is authorized to issue [~~notice of contemplated~~] investigative subpoenas and to employ experts with regard to pending investigations.

[5-31-95; 16.5.16.11 NMAC - Rn, 16 NMAC 5.16.11, 12-14-00; A, 07-16-07; A, 07-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.18 NMAC Section 8, effective 07-17-08.

### 16.5.18.8 FEES:

A. All fees are non-refundable.

B. Application fee for licensure by examination is \$250, which includes the initial licensing period.

C. Application fee for licensure by credentials is \$300, which includes the initial licensing period.

D. An applicant who does not obtain a passing score on the jurisprudence exam must submit an additional fee of \$50 to re-take the exam.

E. Triennial renewal fee for all dental hygienist licensee is \$225:

(1) impaired fee is \$15 per triennial renewal period plus renewal fee;

(2) late renewal fee of \$100 after July 1 through September 1, plus renewal and impaired fees;

(3) cumulative late fee of \$5 per day from August 1 to the date of the postmark or hand-delivery to the board office plus renewal, late and impaired fees.

F. Fees for collaborative practice:

(1) application for certification for collaborative practice fee is \$150;

(2) renewal of certification for collaborative practice fee is \$50 at the time of each triennial license renewal; the initial fee will be prorated at \$20 per full year of

certification.

G. Fees for temporary licenses and application:

(1) forty-eight hour license, application fee of \$50, license fee of \$50;

(2) six month license, application fee of \$100, license fee of \$100;

(3) twelve month license, application fee of \$100, license fee of \$150.

H. Application for certification in local anesthesia fee:

(1) by examination - \$40;

(2) by credentials - \$100 for application and credential review.

I. Reinstatement fee is \$200.

J. Application for licensure for inactive status is \$50.

K. Administrative fees:

(1) duplicate license fee is \$25;

(2) multiple copies of the statute or rules are \$10 each;

(3) copies cost [~~\$0.50~~] \$0.25 per page, [~~with a minimum charge of \$5.00~~];

(4) list of current dental hygiene licensees is \$250; an annual list of current licensees is available to the professional association upon request at no cost; and

(5) mailing labels of current dental hygiene licensees is \$300.

[3-14-73, 4-11-81, 3-7-88, 3-28-91, 5-31-95, 12-15-97, 8-16-99; 16.5.18.8 NMAC - Rn & A, 16 NMAC 5.18.8, 06-14-01; A, 9-30-02; A, 12-30-02; A, 03-06-05; A, 04-17-06; A, 04-16-08; A, 07-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.19 NMAC Sections 8 and 9, effective 07-17-08.

### 16.5.19.8 PREREQUISITE REQUIREMENTS FOR LICENSE:

Each applicant for licensure as a dental hygienist by examination must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least two academic years of dental hygiene curriculum as defined in Section 61-5A-13 of the act;

B. passed the dental hygiene national board examination as defined in Section 61-5A-13,A;

C. passed the WREB or CRDTS examination; the results of the WREB or CRDTS exam are valid in New Mexico for a period not to exceed five years:

(1) the applicant shall apply directly to WREB or CRDTS for examination, and

(2) WREB or CRDTS results

must be sent directly to the board office; and

D. passed the jurisprudence exam with a score of at least 75 percentile;

E. the committee requires a level III background status report from a board designated professional background service for new graduates, and a level II background status report from a board designated professional background service for any other applicant; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service.

[3-14-73, 10-4-86, 3-7-88, 5-31-95; A, 12-15-97, A, 8-16-99; 16.5.19.8 NMAC - Rn & A, 16 NMAC 5.19.8, 12-30-02; A, 07-17-08]

**16.5.19.9 DOCUMENTATION REQUIREMENTS:** Each applicant for a dental hygiene license by examination must submit the required fees and following documentation:

A. completed application, signed and notarized with a passport quality photo taken within six months affixed to the application; applications are valid for one year from the date of receipt;

B. official transcripts or an original letter on letterhead with a raised embossed seal verifying successfully passing all required courses from the dental hygiene program, to be sent directly to the board office from the accredited program;

C. copy of WREB or CRDTS certificate or score card;

D. copy of national board examination certificate or score card;

E. proof of having taken a course in infection control technique or graduation from dental hygiene school within the past 12 months;

F. proof of current basic life support certification accepted by the American heart association or the American red cross; ~~and~~

G. verification of licensure in all states where the applicant holds or has held a license to practice dental hygiene or a related profession; verification must be sent directly to the board office from the other state(s) board, must include a raised seal, and must attest to the status, issue date, license number, and other information contained on the form; and

H. the appropriate status report from a board designated professional background service must be received by the board office directly from a board designated professional background service; the results of the background check must either indicate no negative findings, or if there are

negative findings, those findings will be considered by the committee.

[3-14-73, 3-7-88, 10-4-86, 5-31-95, 9-30-96, 12-15-97; 16.5.19.9 NMAC - Rn & A, 16 NMAC 5.19.9, 12-30-02; A, 04-16-08; A, 07-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.20 NMAC Section 8, effective 07-17-08.

### 16.5.20.8 PREREQUISITE REQUIREMENTS FOR LICENSE:

Each applicant for licensure as a dental hygienist by credentials must possess the following qualifications:

A. graduated and received a diploma from an accredited dental hygiene program consisting of at least ~~two~~ 2 academic years of dental hygiene curriculum as defined in Section 61-5A-13, NMSA 1978 of the act;

B. completed ~~fifteen~~ 15 hours of continuing education during the past year; these hours must meet the qualifications as defined in 16.5.1.15 NMAC;

C. passed the dental hygiene national board examination as defined in Section 61-5A-13, A., NMSA 1978;

D. passed the jurisprudence exam with a score of at least 75 percent;

E. holds a ~~valid license~~ current active license in good standing obtained through a clinical examination in another state or territory of the United States;

F. the committee requires a level III background status report from a board designated professional background service; application for this service will be included with other application materials; the applicant will apply and pay fees directly to a board designated professional background service to initiate this service;

G. all licenses held by the applicant must have been in good standing for ~~two~~ 2 years prior to application;

H. the committee may deny, stipulate, or otherwise limit a license if it is determined the applicant is guilty of violating any of the provisions of the act, the Uniform Licensing Act, the Impaired Dentists and Hygienists Act, or these rules. [3-28-91 . . . 5-31-95, 9-30-96, 8-16-99; 16.5.20.8 NMAC - Rn, & A, 16 NMAC 5.20.8, 06-14-01; A, 03-06-05, A, 04-16-08; A, 7-17-08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.26 NMAC Section 8, effective 07-17-08.

### 16.5.26.8 REVOCATION OF LICENSE FOR NON-RENEWAL:

Unless an application for license renewal is received by the board office, or post-marked, before September 1, the license shall be revoked for non-renewal.

[3/14/73, 5/31/95; 16.5.26.8 NMAC - Rn, 16 NMAC 5.26.8, 04/17/06; A, 7/17/08]

## NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.28 NMAC Sections 9 and 10, effective 07-17-08.

### 16.5.28.9 CERTIFICATION BY EXAMINATION:

Applicants for certification in local anesthesia by exam must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a ~~valid license~~ current active license in good standing to practice dental hygiene in New Mexico;

(2) successful completion of an approved educational program in local anesthesia of at least 24 didactic hours and 10 hours of clinical training given in an accredited dental hygiene program; and

(3) successfully pass a written and clinical local anesthesia examination administered by WREB; the results of the WREB exam are valid in New Mexico for a period not to exceed five years.

B. Documentation:

(1) copy of current basic life support certification accepted by the American heart association or the American red cross;

(2) transcript from an accredited dental hygiene program documenting successful completion of an approved educational program in local anesthesia; and

(3) certificate or score card from WREB indicating successful completion and date of local anesthesia exam.

[3/14/73, 4/10/81, 5/31/95, 12/15/97; 16.5.28.9 NMAC - Rn, 16 NMAC 5.28.9, 04/17/06; A, 04/16/08; A, 07/17/08]

### 16.5.28.10 CERTIFICATION BY CREDENTIALS:

Applicants for certification in local anesthesia by credentials must possess the following qualifications and submit the required fees and documentation, along with a completed application.

A. Qualifications:

(1) a ~~valid license~~ current active license in good standing to practice dental

hygiene in New Mexico;

- (2) successful completion of educational coursework in local anesthesia; and
- (3) administration of local anesthesia in the practice of dental hygiene for at least three of the past five years.

B. Documentation:

- (1) copy of current basic life support certification accepted by the American heart association or the American red cross;
- (2) proof of successful completion of educational coursework in local anesthesia;
- (3) proof of certification by examination to practice local anesthesia in another state;
- (4) a letter of verification from each jurisdiction where the applicant holds a certificate for administering local anesthesia, sent directly from the board in each jurisdiction, describing any disciplinary action taken against the applicant; and
- (5) proof of administration of local anesthesia while engaged in the practice of dental hygiene in at least three of the past five consecutive years; proof may be by notarized letters from employers, supervisors of dental clinics of the uniformed services of the United States, or faculty administrators of schools of dental hygiene ~~and/or~~ or dentistry.

[3/16/94, 5/31/95, 12/15/97; 16.5.28.10 NMAC - Rn, 16 NMAC 5.28.10, 04/17/06; A, 04/16/08; A, 07/17/08]

### NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.30 NMAC Section 11, effective 07-17-08.

**16.5.30.11 INVESTIGATIVE SUBPOENAS:** The complaint committee of the committee is authorized to issue ~~[notice of contemplated]~~ action investigative subpoenas and to employ experts with regard to pending investigations.  
[5-31-95; 16.5.30.11 NMAC - Rn & A, 16 NMAC 5.30.11, 12-14-00; A, 04-16-08; A, 07-17-08]

### NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.32 NMAC Section 8, effective 07-17-08.

**16.5.32.8 FEES:**

- A. all fees are non-refundable;
- B. application fee: \$25.00;
- C. examination fee not to exceed \$100 per exam;
- D. triennial renewal fee: \$45.00;
- E. late penalty fee: \$25.00;
- F. duplicate certificate fee: \$10.00;
- G. list of current certificate holders: \$250; an annual list of current certificate holders is available to the professional association upon request at no cost;
- H. labels of current certificate holders: \$300;
- I. reinstatement fee: \$15.00; ~~and~~
- J. DXTR rental fee, per day: \$15.00;
- K. copies cost \$0.25 per page.

[9/7/84, 3/7/88, 4/12/92, 5/31/95, 9/30/96; 16.5.32.8 NMAC - Rn, 16 NMAC 5.32.8, 04/17/06; A, 07-16-07; A, 07-17-08]

### NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.33 NMAC Section 13, effective 07-17-08.

**16.5.33.13 CERTIFICATION BY CREDENTIALS:** Applicants for certification by credentials shall provide to the NMBODHC or its agent:

- A. verification of a current ~~[valid]~~ active certificate from another state, or
- B. an official letter from the director of an accredited dental hygiene program indicating the applicant has completed coursework in the requested expanded function, or
- C. proof of current, valid, certification as a CDA issued by DANB; and
- D. all certifications, letters and validations must be received directly by the board office from the state, institution, or DANB.

[8-11-89... 5-31-95, 9-30-96, 1-1-98, 2-14-00; 16.5.33.13 NMAC - Rn & A, 16 NMAC 5.33.13, 12-14-00; 16.5.33.13 NMAC - Rn, 16.5.33.14 NMAC & A, 12-30-02; A, 07-17-08]

### NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.37 NMAC Section 8, effective 07-17-08.

**16.5.37.8 REVOCATION OF CERTIFICATE FOR NON-RENEWAL:** Unless an application for certificate renewal is received by the board office, or post-marked, before September 1, the certificate

shall be revoked for non-renewal.  
[5/31/95, 9/30/96; 16.5.37.8 NMAC - Rn, 16 NMAC 5.37.8, 04/17/06; A, 07/17/08]

### NEW MEXICO BOARD OF DENTAL HEALTH CARE

This is an amendment to 16.5.40 NMAC Section 11, effective 07-17-08.

**16.5.40.11 INVESTIGATIVE SUBPOENAS:** The complaint committee

of the board is authorized to issue ~~[notice of contemplated action]~~ investigative subpoenas and to employ experts with regard to pending investigations.

[8/15/95; 16.5.40.11 NMAC - Rn, 16 NMAC 5.40.11, 04/17/06; A, 07/16/07, A, 07/17/08]

## NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, Sections 6, 8, 9, 10, 12, 13 and 15, effective June 30, 2008.

**5.5.50.6 OBJECTIVE:** The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or "in plant training," strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program's inception in 1972, more than 800 companies and 40,000 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

**A. Company eligibility:** Three categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators and film post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. To be considered for JTIP, non-retail service companies must export a service rather than import a customer. The third category - film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion requirements, refer to "company qualifications and requirements" in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP participants.

**B. Job eligibility:** Jobs

eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least 90% of the county median wage to qualify in urban locations and [~~\$8.00~~] \$8.50 in rural locations. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit. An additional incentive is offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

**C. Trainee eligibility:** To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be currently domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence), and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

**D. Reimbursable training costs:** Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A significant portion of trainee wages (50% - 75% for up to six months of initial training).

(b) A significant portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses (50% - 75%) with a cap of 5% of

total funding for wages.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are eligible for an additional 5% wage reimbursement above the standard rates.

(3) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

**E. Program management and administration:** General management of the Job Training Incentive Program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board has adopted this policy manual to ensure the program supports the development of New Mexico's economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the Job Training Incentive Program is the responsibility of the JTIP staff in the New Mexico economic development department. One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008]

### 5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

**A. Company qualifications and requirements:** The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds; companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the customer

premises is excluded. Manufacturing businesses are typically included in Sectors 31-33 of the North American industry classification system (NAICS). Renewable power generators and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is also not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service rather than import a customer. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. JTIP will not consider contractors which rely on income that is already in the state of New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, or telemarketing are not eligible for JTIP funds. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they communicate information provided to them by their clients. For contract-based call centers, the positions must meet or exceed at least 90% of the county median to qualify in urban locations pay at least \$8.50 in rural areas. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. Headquarter facilities which are considered shared services centers are also eligible. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). [A company whose employees are compensated solely on piecework is also not eligible.] The board uses the north

American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Start-up companies are also eligible. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the three prior years. The company must meet or exceed the average employment level for the past three years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program previously, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements (profit and loss and balance sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials may submit financials for the period for which they are available, evidence of investment funding, a business plan, evidence of signed contracts, [and/or] or pro forma financial statements which would substantiate their business expansion.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining

authentic Native American products using labels, trademarks and other measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP lay-offs exceeds \$100,000 of reimbursement. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a separation of an employee from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for JTIP.

**B. Position qualifications and requirements:** The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested.

**C. Trainee qualifications and requirements:** The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is

requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees hired after April 8, 2005 must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or Industrial Development Training Program are not eligible to participate again with the same company.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to [~~still~~] be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a permanent full-time employee before the end of the JTIP approved training hours.

(b) The trainee must receive the same wages and major medical, dental, and vision benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position and complete training

before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008]

#### **5.5.50.9 ELIGIBLE TRAINING PROGRAMS:**

**A.** The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

**B.** The types of training projects eligible under the Job Training Incentive Program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

**C. On-the-job training:** Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) [~~and/or~~] or "hands-on" skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O\*NET job description, and training units. Each unit will include core content [~~and/or~~] or objectives, methods and materials, and requested hours. The training plan must cover the entire period for which reimbursement is requested. A more detailed description of the training plan requirements is included in the *JTIP proposal guide*.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation. Please refer to the sample contract in the appendix.

**D. Custom training provided by a New Mexico post-secondary**

**public educational institution:** Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP participants are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution [~~and/or~~] or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Reimbursement for classroom training will be at a maximum rate of \$35 per hour of training per trainee with a cap of \$1,000 per employee. Tuition reimbursement is not eligible for JTIP funding.

(5) Facilities rental outside a public educational institution and equipment rental [~~and/or~~] or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation. [5.5.50.9 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008]

#### **5.5.50.10 REIMBURSABLE EXPENSES:**

**A.** The following expenses are eligible for reimbursement through JTIP.

(1) A significant percentage of trainee wages (50% - 80% for up to six months of initial training).

(2) A percentage of travel expenses associated with training (50% - 75%).

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a



maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

**B.** Standard reimbursement rates for wages and travel range from 50% to 75%. Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are also eligible for an additional 5% wage reimbursement. If a company is participating in other job reimbursement training programs such as the Workforce Investment Act (WIA), the combined reimbursement to the company may not exceed 100%.

**C.** The Job Training Incentive Program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

**D. Wage reimbursement:**

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of reimbursement ranges from 50% to 75%, depending on the business location. An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O\*NET (occupational information network) job zone classification for the O\*NET position which most closely matches the company’s job description and the wage paid the trainee at the point of hire. The O\*NET system, sponsored by the US department of labor, is available at <http://onetcenter.org>. Each job in the O\*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	160	[ <del>8.00</del> 9.00	[ <del>Below 7.50</del> 8.00	20	4
1a	Little or no preparation needed	Below 4.0	320	[ <del>9.00</del> 10.00	[ <del>7.50</del> 8.50	40	8
2	Some preparation needed	4.0 to < 6.0	480	[ <del>10.50</del> 11.50	[ <del>8.25</del> 9.00	60	12
2a	Some preparation needed	4.0 to < 6.0	640	[ <del>12.00</del> 13.00	[ <del>9.00</del> 9.50	80	16
<u>3</u>	<u>Medium preparation needed</u>	<u>6.0 to &lt; 7.0</u>	<u>800</u>	<u>14.50</u>	<u>11.00</u>	<u>100</u>	<u>20</u>
3a	Medium preparation needed	6.0 to < 7.0	960	[ <del>15.00</del> 16.00	[ <del>11.00</del> 12.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	[ <del>18.00</del> 19.00	13.00	130	26
	Align with HWJTC	Additional 5%	1040	19.25	13.50	130	26

(3) The JTIP board will ensure that the O\*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O\*NET guideline. The board will also review the company’s educational and experience requirements of the applicants to determine the degree of match with the company’s job descriptions. The JTIP board awards training hours based on the O\*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O\*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at 50% for all eligible training hours. Urban communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203).

(b) Companies located in rural areas, which is defined as any area 10 miles outside the urban areas listed above are reimbursed at 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at 70% for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for 75% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit are eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area. Reimbursement for positions which meet these requirements is 55% in an urban location, 70% in a rural location, 75% in frontier, and 80% in an economically distressed area and on Native American land. Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIA, the combined reimbursement to the company may not exceed 100%.

**E. Reimbursement for custom classroom training:** Payment for custom classroom training services provid-

ed by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. *No training equipment may be purchased or rented using JTIP funds.*

**F. Travel cost and per diem reimbursement for trainees and trainers:** Trainee travel and per diem may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel and per diem will be consistent with the rates as designated by location (50% for urban, 65% for rural, 70% for frontier, and 75% for economically distressed and Native American areas). Travel and per diem must be pursuant to 2.42.2 NMAC of the department of finance and administration's regulations governing the Per Diem and Mileage Act. Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008]

**5.5.50.12 PROCEDURAL OVERVIEW:** The procedure for completing a funding proposal is explained in detail in the *JTIP proposal guide*. The procedure for program participation once funding is approved is described in the *JTIP program guide*. This summary is intended to provide a general overview of the process. Please refer to the appropriate guide when completing a proposal for funding and administering the program once it is funded. JTIP staff is available for assistance with these processes.

**A.** Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than ~~one month~~ four weeks before the JTIP board meeting at which the proposal will be considered for funding. Early submission is required to allow JTIP staff and board members to review the materials and request clarification or additional information if needed. Ten copies of the proposal will be requested once the proposal has been reviewed by staff and refined, if necessary.

**B.** Board meetings are generally held on the second Friday of each month. The alternate date, which is used when a meeting on the second Friday is not

viable (a quorum cannot be achieved, holiday, etc.) is the third Friday of the month.

**C.** The contract start date is the date of the board meeting at which funding was approved. The contract end date is one year after the start date. All claims for reimbursement must be submitted and the final audit must be completed within 30 days of the contract end date.

**D.** The contractual agreement will be prepared and mailed out to the company within 15 working days after the board approval date. A sample contract is included as an appendix to this manual. Companies are encouraged to review the contract before applying for funding, as the contract cannot be edited.

**E.** The company must return the signed contractual agreement to the economic development department within 15 business days from the issue date.

**F.** Eligible job openings must be registered with the New Mexico department of workforce solutions. The company is also encouraged to advertise through the placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is available from the New Mexico higher education department (<http://hed.state.nm.us>).

**G.** The company must hire trainees within six months of the contract start date. This timing ensures that trainees who are eligible for six months of training will complete the program before the contract end date.

**H.** The company must provide the JTIP staff with a roster of new hires at the end of the six month hiring period. When the company submits the list, the allocation of funds for their contract will be adjusted to reflect the number of people hired. The board will not entertain extensions to the contract.

**I.** Claims for reimbursement should be submitted as each participant completes training.

**J.** Each project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys.

**K.** The company must arrange for a final audit by an independent accounting firm registered with the New Mexico regulation and licensing department, board of accountancy. A list of approved auditors is available from JTIP staff or from ([www.saonm.org](http://www.saonm.org)). A specific amount for the audit is included as part of the proposal approval. Any amount in excess of this amount is the responsibility of the company. The audit must be completed before the end of the contract. Companies should keep this deadline in mind when selecting an auditor. The final audit

requirement does not apply to contracts for custom training at New Mexico higher educational institutions. These institutions must meet all other program requirements and are subject to a compliance audit by JTIP staff.

L. All claims for reimbursement must be submitted and the final audit must be completed before the contract end date. The final claim for reimbursement should be submitted with the completed final audit. The final wage claim will be paid once the final audit has been received and approved favorably.

M. Yearly follow-ups are conducted to show effectiveness of the program, including surveys to address retention rates of program participants.

N. Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

[5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008]

#### 5.5.50.13 AMENDMENTS:

A. Amendments to the contract may be allowed in special circumstances. Amendments may be required by administrative changes (such as job classification changes, company name change, etc.) and changes to the number of participants funded. Companies must submit an amendment request, along with supporting documentation to justify the amendment to the job training incentive program board. All amendment requests must include 1) a letter describing the change requested and the reason for the change, 2) a completed amendment form, and in some cases a current financial statement. A copy of the amendment form is included in the *JTIP program guide*. Amendments to add new types of positions not already a part of the contract must be approved by the JTIP board before the participants are hired. Amendments which increase the number of participants in approved positions and increase the budget by more than \$10,000 must also be approved by the board prior to participants being hired. Amendment requests which are administrative in nature and do not increase the original budget amount by more than \$10,000 may be executed by JTIP staff. Examples include job classification changes, company name change, and changes to wage ranges. Amendments to decrease the number of positions in the contract, including the release of funds for positions not filled within the six-month hiring period, may also be executed by JTIP staff without board approval. The program manager and division director or his/her designee will approve all staff executed contract changes. Otherwise, the JTIP board must approve all

contract amendments. If a company requests an amendment increasing the original contract by more than 50% or \$100,000, whichever is the lesser amount of the two, a new proposal must be submitted. However, if the company submits a new proposal within six months of the original proposal which is for an amount greater than would normally be allowed for amendment, the company may submit a shorter modified proposal.

~~[B.] Amendment requests which are administrative in nature and do not impact the original budget amount by more than \$10,000 (above or below) may be executed by JTIP staff. Examples include job classification changes, company name change, wage ranges, and time extensions to the contract. The program manager and division director or his/her designee will approve all staff executed contract changes. Otherwise, the JTIP board must approve all contract amendments.~~

~~[C.] B.~~ All project amendment requests must be submitted in writing one month prior to the board meeting. The board meetings are held on the second Friday of every month, with the third Friday occasionally used as an alternate. ~~[Amendments must begin within thirty days from the approval date.]~~

[5.5.50.13 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008]

#### 5.5.50.15 GLOSSARY:

A. Agriculture/mining/extractive industries: Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

B. Company: A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

~~[A.] C. Economically distressed areas:~~ Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-siz-

ing, a decline in population, loss of gross receipts or other factors.

~~[B.] D. Expanding company:~~ An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the three prior years. (Refer to "peak employment.")

E. Film and multimedia post production: Film post-production is considered manufacturing provided the company is primarily engaged in any of the following: animation, editing, Foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at any time.

E. Frontier: a frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

~~[C.] G. High wage job tax credit:~~ The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2009, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

~~[D.] H. Manufacturing:~~ Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location

approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons.”

**[E-] L. NAICS:** North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at [www.census.gov/epcd/naics02/naicod02.htm](http://www.census.gov/epcd/naics02/naicod02.htm).

**[F-] J. Native American crafts:** Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

**[G-] K. New company:** A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

**[H-] L. Non-retail service sector business:** To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

**[I-] M. O\*NET:** The occupational information network - O\*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O\*NET. The O\*NET database is available at [www.onetcenter.org](http://www.onetcenter.org).

**[J-] N. Peak employment:** First time JTIP applicants: Peak employ-

ment will be based on the employment average from three previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

**[K-] O. Peak employment:** Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last three years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

**[L-] P. Retail trade:** Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

**[M-] Q. Southwestern arts and crafts:** Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

**[N-] R. Urban communities:** An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

**[O-] Frontier:** ~~A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.]~~

**[P-] S. Metropolitan statistical area:** An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and Tarrant counties. Santa Fe MSA includes Santa Fe county.

Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

**[Q-] T. Rural:** Any area located 10 miles or more outside communities defined as urban in the JTIP policy. [5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008]

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## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions (filed 2/09/05), repealed 07/30/08.

7.18.3 NMAC, Public Swimming Pools, Spas and Baths: Design and Construction (filed 02/09/2005), repealed 07/30/08.

7.18.4 NMAC, Public Swimming Pools, Spas and Baths: Maintenance and Operation Requirements (filed 2/09/05), repealed 07/30/08.

7.18.5 NMAC, Public Swimming Pools, Spas and Baths: Fees (filed 2/09/05), repealed 07/30/08.

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## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### TITLE 7                    HEALTH CHAPTER 18           SWIMMING POOLS PART 2                    PUBLIC SWIMMING POOLS, SPAS AND BATHS: GENERAL PROVISIONS

**7.18.2.1                    ISSUING AGENCY:**  
New Mexico Environmental Improvement Board.

[7.18.2.1 NMAC - Rp, 7.18.2.1 NMAC, 07/30/08]

**7.18.2.2                    SCOPE:** Owners and operators of public swimming pools, public spas, public baths, or other public bathing attractions.

[7.18.2.2 NMAC - Rp, 7.18.2.2 NMAC, 07/30/08]

**7.18.2.3                    STATUTORY AUTHORITY:** NMSA 1978, Sections 74-1-1 through 74-1-16.

[7.18.2.3 NMAC - Rp, 7.18.2.3 NMAC, 07/30/08]

**7.18.2.4                    DURATION:**  
Permanent.

[7.18.2.4 NMAC - Rp, 7.18.2.4 NMAC, 07/30/08]

**7.18.2.5                    EFFECTIVE DATE:**  
07/30/08, unless a later date is cited at the end of a section.

[7.18.2.5 NMAC - Rp, 7.18.2.5 NMAC, 07/30/08]

**7.18.2.6 OBJECTIVE:** To protect public health and safety by establishing standards and provisions for the regulation of public swimming pools, spas, baths, and other public bathing attractions.

[7.18.2.6 NMAC - Rp, 7.18.2.6 NMAC, 07/30/08]

**7.18.2.7 DEFINITIONS:** As used in the public swimming pool rules, unless otherwise required by context, the following definitions apply.

**A. Abbreviations.**

(1) "ANSI" means American national standards institute.

(2) "ASHRAE" means American society of heating, refrigeration, and air conditioning engineers, inc.

(3) "CC" means combined chlorine.

(4) "CO" means certified operator.

(5) "CPR" means cardiopulmonary resuscitation.

(6) "CPSC" means consumer product safety commission (U.S.).

(7) "CT" means the concentration (C) of chlorine in ppm multiplied by time (T) in minutes.

(8) "DE" means diatomaceous earth.

(9) "DPD" means diethyl-p-phenylene diamine.

(10) "fps" means feet per second.

(11) "FAB" means free available bromine.

(12) "FAC" means free available chlorine.

(13) "gpm" means gallons per minute.

(14) "mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available.

(15) "NSF" means national sanitation foundation. The NSF standards referenced in the public swimming pool rules can be found at: [www.nsf.org](http://www.nsf.org).

(16) "ppm" means parts per million. See notation under mg/l for use.

(17) "TDH" means total dynamic head.

(18) "TAB" means total available bromine.

(19) "TAC" means total available chlorine.

**B. "Adjacent"** means adjoining, contiguous, or both.

**C. "Air induction system"** means a plumbing system which provides the source of air for the air/water mixture to a hydrotherapy jet.

**D. "Ancillary facilities"** means an area used in conjunction with, or the operation of, a public pool such as public dressing, locker, shower, or bathroom area, equipment room, pool deck area or building space intended to be used for pool users.

**E. "Approved"** means accepted in writing by the department.

**F. "Approved water supply"** means water from a source, supply or system approved by the department that is properly located, protected, and operated. Water shall be easily accessible, adequate, and of safe and sanitary quality.

**G. "Architect"** means any individual currently registered and in good standing under the "New Mexico Architectural Act".

**H. "Attendant"** is a person certified by the American red cross or an equivalent organization in first aid and CPR and otherwise trained to deal with safety hazards related to the particular attraction at which they are employed.

**I. "Backwash"** means the process of cleaning the filter media by reversing the flow of water.

**J. "Backwash cycle"** means the time required to backwash the filter media.

**K. "Backwash rate"** means the rate of water flow through the filter media per unit of filter area, expressed in gallons per minute per square feet.

**L. "Barrier"** means a wall, building, fence or any combination thereof to control access to the pool, pool deck, adjoining areas, and the enclosure.

**M. "Bather"** means any person, excluding on-duty lifeguards and spectators, using a public pool or within the public pool enclosure for the purpose of water sports, recreation, swimming, wading, bathing, therapy or related activities.

**N. "Bather load"** means the number of persons in the water or using the water slide, spray pads, watercourse, interactive play attractions or fountains at any given moment.

**O. "Bathhouse"** means a structure containing dressing rooms, showers or toilet facilities for use with an adjacent public pool.

**P. "Bathing attraction"**, see class C pool.

**Q. "Booster pump system"** means a system whereby one or more hydrotherapy jets are activated by the use of a pump, which is completely independent of the filtration and heating system of a spa. Also, a device used to provide hydraulic support for certain types of equipment such as cleaning systems, gas chlorinators and solar systems.

**R. "Break in grade"** means a place in the public pool floor where the

slope changes.

**S. "Builder"** means a person licensed in the state of New Mexico by the construction industries division, who, undertakes, or offers to undertake, or submits a bid, to construct, modify, or repair any public pool, spa pool or bathhouse and the appurtenances thereto.

**T. "Cardiopulmonary resuscitation (CPR)"** means a lifesaving technique involving both chest compressions to circulate blood and mouth-to-mouth breathing, to restart a non-beating heart.

**U. "Certified operator"** means a person who has a valid department-approved certification to operate a public pool as specified in the public swimming pool rules.

**V. "Chemical feeder"** means a device for applying chemical to the public pool water.

**W. "Circulation equipment"** means the mechanical components that are a part of a public pool's circulation system. Circulation equipment may include, but is not limited to, categories of pumps, hair and lint strainers, drain covers, filters, valves, gauges, meters, heaters, surface skimmers, inlet/outlet fittings, and chemical feeding devices. The components have separate functions, but when connected to each other by piping, perform as a coordinated system for purposes of maintaining pool, spa or bath water in a clear, sanitary, and desirable condition for use.

**X. "Circulation system"** means an arrangement of mechanical equipment or components connected by piping to and from a public pool in a closed circuit. The function of a circulation system is to direct water from the public pool causing it to flow through the various system components for purposes of clarifying, heating, filtering, disinfecting, and returning the water back to the public pool within a required turnover rate. See, recirculation system.

**Y. "Class A pool"** means any public pool including, but not limited to, general admission pools, aquatic centers, recreation parks, schools, colleges and universities, organizational camps, daycare facilities, clubs, recreation districts, city, municipal, county and state pools and pools operated by other political subdivisions as defined by law. Class A pools shall not include pools located at boarding schools, college and university exclusively associated with specific living units but would not be open to the entire college or university population or the general public.

**Z. "Class B pool"** means any public pool, located at, and operated to serve a facility having six or more living or guest units at:

(1) travelers' accommodations, including hotels, motels, inns, lodging,

campgrounds, bed and breakfast facilities;

(2) apartments, condominiums, retirement homes, assisted-living facilities, mobile home parks;

(3) class A exclusions for boarding schools, colleges and universities, group homes;

(4) businesses that employ ten or more people and own a swimming pool or spa that is for the exclusive use of employees and their guests; or

(5) homeowners associations, if the pool is for the exclusive use of the association members and their guests only and no memberships are sold to outside persons.

**AA.** "Class C pool" means a public pool that is designed specifically as a bathing attraction or for sporting or recreational purposes and may include, but is not limited to, special features such as:

- (1) wave pools;
- (2) diving pools;
- (3) splash pools;
- (4) zero depth pools;
- (5) waterslides;
- (6) vortex pools;
- (7) interactive play attractions;
- (8) watercourse rides;
- (9) activity pools; or
- (10) portable pools.

**AB.** "Class D pool" means any public pool used for physical therapy or rehabilitation including but not limited to post-operative and pre-operative strength training, assistance of buoyancy of water, and other one-on-one training.

**AC.** "Class E pool" means an artificial structure, and its appurtenances containing water two feet deep or less which is expressly designated or which is used with the knowledge or consent of the owner or operator for wading or recreational bathing and which is for the use of any segment of the public, whether limited to patrons of a companion facility or not.

**AD.** "Club" means a facility constructed to provide entertainment, athletic or physical conditioning for its members, guests, invitees, occasional users, patrons, or clientele. It includes, but is not limited to, racquetball clubs, country clubs, golf clubs, health spas, fitness, sports and wellness facilities or aerobics instruction facilities.

**AE.** "Combined chlorine (CC)" means that portion of the total residual chlorine that is combined with ammonia or nitrogen compounds and will not react chemically with undesirable or pathogenic organisms.

**AF.** "Contaminant" means any physical, chemical, or biological substance present in the public pool water that may adversely affect the health or safety of the bather or the quality of the water.

**AG.** "Coping" means the

cap on the wall that provides a finishing edge around the public pool or public spa. It may be formed, cast in place, precast, brick, stone, or pre-fabricated from metal or plastic materials.

**AH.** "Cove" means the radius that joins the floor and the wall of a public pool or spa.

**AI.** "Cross connection" means an unprotected connection between the piping carrying potable water and the piping or fixtures that carry public pool water, or other non-potable water, where a contamination of potable water may occur.

**AJ.** "Deck" means areas immediately adjacent to or attached to a public pool that are specifically constructed or installed for sitting, standing or walking.

**AK.** "Deck level diving board" means a diving structure or device rising no more than 18 inches above design water level.

**AL.** "Department" means the New Mexico environment department.

**AM.** "Department representative" means the secretary of the environment department or his/her designees.

**AN.** "Design water level" is defined in one of the following ways:

(1) "skimmer system" means the design water level shall be at the midpoint of the normal operating range of the skimmer;

(2) "overflow system" means the design waterline shall be the top of the overflow rim of the gutter system.

**AO.** "Enclosure" means the public pool area inside the barrier excluding spectator areas.

**AP.** "Engineer" means any individual currently registered and in good standing under the "New Mexico Engineering and Surveying Act".

**AQ.** "Fill and draw public bath" means a public bath that shall be completely drained, cleaned, and disinfected prior to each use.

**AR.** "Filter" means the material that separates particulate matter from the recirculating water.

**AS.** "Filter area" means the area available to separate particulate matter from the recirculating water, expressed in square feet.

**AT.** "Filter design flow rate" means the flow rate of a filter calculated by multiplying the filter area by the filtration rate, expressed in gallons per minute.

**AU.** "Filtration" means the process of removing particulate matter from water by recirculating the water through the filter medium elements.

**AV.** "Filtration rate" means the flow rate of water through a filter expressed in gallons per minute per square

foot of filter area.

**AW.** "Flow meter" means a device that measures the rate of flow of water or liquid through piping.

**AX.** "Flow rate" means the volume of water or liquid flowing past a given point in a specified time. Generally expressed in U.S. gallons per minute (gpm) or gallons per hour (gph).

**AY.** "Flow-through public bath" means a public bath where there is circulation of water through the bath from some natural or developed source, and where the out flowing water is discharged to waste.

**AZ.** "Flume" means an inclined channel for conveying water.

**BA.** "Foothold" means:  
(1) a slip resistant ledge that is attached to the side of the pool or a wall, or  
(2) any protrusion or indentation that could be used to climb a barrier.

**BB.** "Free available chlorine (FAC)" means that portion of the total residual chlorine remaining in chlorinated water that is not combined with ammonia or nitrogen compounds and will react chemically with undesirable or pathogenic organisms.

**BC.** "10/20 guest protection standard" means a nationally recognized professional lifeguard system which enables and requires a lifeguard to consistently and completely scan his/her assigned guest protection zone within 10 seconds and, should the guest need assistance, reach the guest to begin managing an incident within 20 seconds.

**BD.** "Guest protection zone" means a defined and prescribed area of a public pool that a lifeguard is responsible for monitoring.

**BE.** "Handhold" means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

**BF.** "Horseplay" means any unsafe activity that could endanger anyone at a public pool.

**BG.** "Hot springs public bath" means a flow-through public bath with circulation of naturally occurring geothermal mineral water through the bath and where the flowing water is discharged to waste or circulated elsewhere such that the entire volume of water in the bath is completely replaced in more than thirty minutes.

**BH.** "Impervious" means a material that does not allow another substance to pass through or penetrate.

**BI.** "Interactive fountains", see spray pads.

**BJ.** "Lifeguard" means a qualified person currently certified to perform functions that include, but are not limited to, water rescue, lifesaving, and med-

ical care of injuries specific to the public pool facility. The lifeguard certification must be current and obtained from the American red cross, the national pool and waterpark association, United States lifesaving association or an equivalent organization approved by the department.

**BK.** "Lifeguard station" means the designated work area or work station of the lifeguard.

**BL.** "Lifesaving equipment" means emergency, lifesaving, and medical care equipment.

**BM.** "Main drain" means an outlet located at the bottom of a public pool or spa to transfer water to the recirculating pump.

**BN.** "Modify" means any activity at a public pool or public bath or its appurtenances or ancillary facilities, that changes the design, plumbing, hydraulics, equipment, illumination levels or structure, to the extent that its design, configuration or operating characteristics differ in any respect from those of the original.

**BO.** "New construction" means the activity of building or installing a public pool, and its component parts, where no such structure has previously existed or where previously existing pool or spa structures have been removed.

**BP.** "Operating water level range" means the operating water level defined in one of the following ways according to the type of pool construction:

(1) "overflow gutter system" means the manufacturer's maximum stated operating range above the design water level;

(2) "skimmer system" means one inch above to one inch below the midpoint of the operating range of the skimmer throat, or manufacturer's maximum stated operating range.

**BQ.** "Operator", see certified operator.

**BR.** "Person" means:

(1) any person, individual, any public or private firm, partnership, corporation, company, society, association, and every managing body, officer, agent or employee thereof; or

(2) the state, local government, or any agency, institution or political subdivision thereof, including any governing or managing body.

**BS.** "Plummet" means a line perpendicular to water surface and extending vertically to a point located at the front end of the diving board and at the centerline directly in front of the diving board.

**BT.** "Pool slide" means an attraction that has a configuration as defined in the Code of Federal Regulations Vol. 16, Part 1207 and is used to allow users to slide from an elevated height to a public pool.

**BU.** "Private pool" means:

(1) any pool or spa owned by no more than four individuals, either jointly, individually or through association, incorporation or otherwise, for the exclusive use of the occupants thereof and their guests or invitees; or

(2) a swimming pool owned by a business employing fewer than ten persons if the pool is for the exclusive use of employees and their guests.

**BV.** "Public bath" means any manmade structure and its appurtenances intended for public use, other than a plumbing fixture, containing an artificial body of water that is intended to be used individually or collectively for soaking, bathing or recreation, regardless of whether a fee is charged for its use. Public baths shall only be the fill-and-draw or flow-through type.

**BW.** "Public pool" means any manmade structure and its appurtenances containing water that is expressly designated or used with the knowledge or consent of the owner or operator for swimming, water recreation, or bathing for the use of any segment of the public. This term does not include residential housing or lodging facilities having five or less living units. The term "public pool" includes all class A class B, class C, class D, and class E pools or public spa pools, spray pads, bathing attractions and public baths. Plumbing fixtures associated with a specific living unit, or fill-and-draw hydrotherapy tubs used by and exclusively for sport team member training and injury rehabilitation are excluded. The term "public pool" includes, but is not limited to, public pools owned or operated by:

(1) travelers' accommodations including hotels, motels, inns, lodging and bed and breakfast facilities, hostels and recreational vehicle parks;

(2) residential housing or lodging facilities having six or more living units;

(3) apartments or apartment complexes, condominiums and mobile home parks;

(4) recreation parks;

(5) colleges or universities;

(6) schools and group homes;

(7) organizational camps;

(8) clubs;

(9) associations;

(10) business establishments for their patrons or employees;

(11) private persons with pools that are open to the public;

(12) recreation districts; or

(13) cities, municipalities, counties, the state of New Mexico or other political subdivisions.

**BX.** "Public spa pool" means any manmade structure and its appurtenances containing an artificial body of water that is intended to be used individ-

ually or collectively by persons for bathing or recreational uses, or therapeutic use and which is not a fill-and-draw or a flow-through public bath, regardless of whether a fee is charged for its use. It may include, but not be limited to, hot water, cold water, mineral baths, hydrojet circulation, air induction bubbles, or any combination thereof, excluding fill-and-draw and flow-through public baths. Terminology for a spa includes, but is not limited to: therapeutic pool, rehabilitation pool, hydrotherapy pool, and whirlpool, hot spa or hot tub. Spa may be class A or class B.

**BY.** "Recirculation system", see circulation system.

**BZ.** "Repair" means the routine maintenance or replacement of existing equipment with an equivalent equipment type to maintain the public pool in good working condition. Repairs are not considered modifications under 7.18.2.7.BN NMAC.

**CA.** "Secretary" means the secretary of the New Mexico environment department.

**CB.** "Self-closing and self-locking device" means a device that causes a gate or door to automatically fully close and lock without human or electrical power.

**CC.** "Separation tank" means a tank used with a filter to facilitate the separation of filtrate material for disposal.

**CD.** "Service animal" means a guide dog, signal dog, or other animal trained to do work or perform tasks for the benefit of an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, or providing minimal protection or rescue work, such as pulling a wheelchair or fetching dropped items.

**CE.** "Skimmer" means a device installed in a public pool or spa that permits the removal of floating debris and surface water to the recirculating pump.

**CF.** "Skimmer weir" means that part of a skimmer which adjusts automatically to small changes in water level to ensure a continuous flow of water to the skimmer.

**CG.** "Spa", see public spa pool.

**CH.** "Spray pad" means a pool or basin occupied by constructed features that spray water in various arrays for the purpose of wetting the persons playing in the spray streams.

**CI.** "Supplemental disinfectant" means a department approved disinfectant that is intended to augment water quality in a public pool or spa and provide disinfection.

**CJ.** "Swimming pool", see public pool.

**CK.** "Test kit" means a testing device approved by the secretary, capable of measuring all water quality parameters required in public swimming pool rules.

**CL.** "Total available bromine (TAB)" means the sum of the free available and combined bromine.

**CM.** "Total available chlorine (TAC)" means the sum of the free available and combined chlorine.

**CN.** "Total discharge head" means the sum of the static discharge head, the discharge velocity head, and the friction head in the discharge line of the pump.

**CO.** "Total dynamic head (TDH)" means the arithmetic difference between total discharge head and the suction head. This value is used in developing the performance curve.

**CP.** "Total suction head" means the arithmetic total of the static suction head, friction head loss, and velocity head loss on the suction side of pump.

**CQ.** "Total system head loss", see total dynamic head (TDH).

**CR.** "Tripping hazard" means any abrupt rise, spalling walks, sunken or raised walkways, or other condition that could cause tripping.

**CS.** "Turnover rate" means the time required to circulate the entire volume of the pool or spa water through the circulation system once.

**CT.** "Underwater light" means a lighting fixture which illuminates a pool or spa from beneath the water surface.

**CU.** "User", see bather.

**CV.** "Valve" means any device in a pipe that will partially or totally obstruct the flow of water or air, or permit flow in one direction only.

**CW.** "Variance" means written permission from the department to use an alternative measure of compliance with any provision in the public swimming pool rules, except those specifically prohibited in the rule. The alternative measure shall provide public health and safety protection that is equal to or greater than the protections provided in this rule.

**CX.** "Walking surface" means any surface used as a direct access surface for a pool, well as the area leading to and from the pool to locker, restroom or change room facilities.

**CY.** "Watercourse ride" means a water recreation attraction designed to convey bathers on inner tubes, logs, or raft-like devices, using an artificially created current.

**CZ.** "Water depth" means the vertical distance from the bottom of the pool to the top of the design water level.

**DA.** "Water safety instructor" means a currently certified American red cross water safety instructor, or a person

having equivalent certification as determined by the department.

**DB.** "Waterslide" means a slide at a public pool consisting of one or more flumes and designed to convey users from an elevated height to a public pool.

**DC.** "Water surface" means that portion of the pool surface where swimming, recreational bathing, or wading is allowed.

[7.18.2.7 NMAC - Rp, 7.18.2.7 NMAC, 07/30/08]

**7.18.2.8 ADOPTION BY REFERENCE:** Outside standards, listings, and publications referenced in this rule are part of this rule.

[7.18.2.8 NMAC - Rp, 7.18.2.8 NMAC, 07/30/08]

**7.18.2.9 ENFORCEMENT AUTHORITY:**

**A.** Private pools shall not be subject to the provisions of this regulation or 7.18.3 NMAC, Public Swimming Pools, Spas and Baths: Design and Construction or 7.18.4 NMAC, Public Swimming Pools, Spas and Baths: Maintenance and Operation Requirements or 7.18.5 NMAC, Public Swimming Pools, Spas and Baths: Fees.

**B.** Department representatives shall be responsible for the enforcement of this rule.

[7.18.2.9 NMAC - Rp, 7.18.2.9 NMAC, 07/30/08]

**7.18.2.10 CONSTRUCTION PERMITS:**

**A.** No person shall construct or modify a public pool or bath, or part thereof, or convert a private pool or bath into a public pool or bath without first:

(1) submitting a construction permit application that shall include plans, specifications, supporting material, and other information required by the department;

(2) receiving a construction permit; and

(3) paying all applicable fees.

**B.** No person shall deviate from the approved plans and specifications during the construction or modification of public pools or baths facilities described in this rule without first receiving prior written approval from the department.

**C.** Construction permits will be issued only to the owner or authorized agent of the owner.

**D.** A construction permit may be issued only when the facility owner or agent has provided sufficient information for the department to determine that the public pool will:

(1) operate continuously in a

clean and sanitary manner;

(2) not constitute a menace to public health and safety; and

(3) provide health and safety protection equal to or greater than that required by the public swimming pool rules.

**E.** Plans and specifications for a proposed public pool that demonstrate a new technology or alternative mode of operation not contemplated in these rules shall apply for a variance.

**F.** The department shall issue a construction permit, issue a construction permit with conditions, or deny the construction permit. The department may revoke a construction permit under 7.18.2.19 NMAC or suspend a construction permit if the department determines that the provisions of the public swimming pool rules are not met.

**G.** The department shall notify the applicant in writing that the application is complete or incomplete within 30 days of receipt of the application.

**H.** Once the department determines that the application is complete, for class B pools, the department shall have up to 30 working days to issue the permit, issue the permit with conditions, or deny the permit. For class A, C, D and E pools, the department shall have up to 90 working days to issue the permit, issue the permit with conditions, or deny the permit. All permit denials shall be in writing stating the reason the permit was denied. The applicant for a permit that has been denied may request an administrative hearing. The request for a hearing shall be made in writing to the department within 15 calendar days after notice of the department's decision has been received by the applicant. Hearings on permit denials shall be held in accordance with 7.18.2.22 NMAC and 20.1.5 NMAC.

[7.18.2.10 NMAC - Rp, 7.18.2.10 NMAC, 07/30/08]

**7.18.2.11 PLANS AND SPECIFICATIONS:**

**A.** Clear and legible plans and specifications shall be prepared, stamped, and signed by a professional engineer or architect registered in the state of New Mexico.

**B.** Plans for each public pool shall be submitted in duplicate, drawn to scale, and shall include:

(1) one plan view;

(2) one longitudinal section;

(3) one transverse section through the main drain;

(4) one overall site plan showing the pool in relation to other facilities in the area with true north indicated;

(5) a detailed view of the equipment and pump room layout, and any asso-



ciated room, ancillary facilities, or locations;

(6) location of all above and below ground utilities;

(7) one piping schematic showing the locations, direction of flow, and the dimensions of all piping, pipe size, inlets, fill spouts, main drains, skimmers, gutter outlets, perimeter overflow gutter systems, vacuum fittings, and all other appurtenances and equipment connected to the pool circulation system;

(8) one cross section of the step treads and risers;

(9) means of disposing of backwash and wastewater in accordance with the law;

(10) specifications of all required components;

(11) deck drains, if required;

(12) location of wastewater receptacle;

(13) emergency phone location;

(14) emergency pump shut-off switch location;

(15) location of any lifeline or lane anchors;

(16) location, layout, and specifications of the pool enclosure, including windows, HVAC (heating, ventilation, and air conditioning system, if applicable), barriers, gates and doors;

(17) electrical layout drawings and specifications for the deck (area) and underwater lighting;

(18) other information the department may require.

**C.** Plan notes denoting "work by others" or an equivalent phrase shall not be acceptable as a substitute for scale drawings, details and specifications.

**D.** Plans shall include the following information in tabulated form:

(1) legal address of the facility;

(2) location of the facility if different from legal address;

(3) owner's name, address, and telephone number;

(4) architect or engineer's name, address, and telephone number;

(5) surface area of pool;

(6) bather load;

(7) pool volume, turnover rate, type of filter media proposed and the manufacturer-recommended maximum and design filtration and filter flow rates, and total filter area;

(8) manufacturer's make and model numbers of the pump, and automatic chemical feeders or other disinfection equipment, maximum design filter head loss (under clean and dirty conditions), pump curve showing the system head curves and the pump performance curves showing design flows, total suction head, total discharge head, and total dynamic head (or total system head loss), basis for

pump selection, and other hydraulic engineering calculations or supporting documentation that the department may require;

(9) source of water used at the pool, including water samples or results of water sampling (if requested by the department); and

(10) other information the department may require.

**E.** Plans shall show the location of emergency telephones.

**F.** Nothing in the swimming pool rules shall prevent the department from requiring the correction of errors in plans and specifications after those plans have been approved or the specifications accepted. The department may also revoke any construction permits or approvals that are issued in error, or obtained based upon material misrepresentations or erroneous information provided by the applicant.

**G.** The department may also issue a stop work order whenever construction work deviates from approved plans and specifications without prior written approval from the department, violates any permit condition, or is in violation of this or any other law or regulation. The department shall provide written notice of the stop work order to the person performing the work or causing the work to be performed, and the person receiving such notice shall cease and desist from performing, or causing the performance of, the work until authorized in writing by the department to proceed.

**H.** Private pools that are converted into public pools or public pools that were previously operating without a permit shall be subject to the swimming pool rule's provisions including, but not limited to, the requirement to obtain a construction permit.

[7.18.2.11 NMAC - Rp, 7.18.2.11 NMAC, 07/30/08]

#### **7.18.2.12 OPERATING PERMITS:**

**A.** No person shall operate a public pool, spa, or bath without an operating permit from the department. Each public pool at a facility or site shall be permitted separately.

**B.** Operating permits shall be issued for a period of time for which the pool will be operating or a period of twelve consecutive months, whichever is less. The operating permit shall only be issued after completion of a department inspection that demonstrates compliance with the public swimming pool rules and after receipt of all applicable fees.

**C.** No person shall operate a public pool without first:

(1) receiving a construction permit from the department, if applicable;

(2) obtaining an approved final

construction inspection, if applicable;

(3) applying for a permit to operate such pool;

(4) receiving a permit from the department; and

(5) paying all applicable fees.

**D.** The permit shall remain the property of the department and shall be removed by the department representative when a permit is suspended or revoked.

**E.** The department shall grant permission to operate a seasonal public pool only upon completion of a satisfactory pre-opening inspection.

**F.** The department shall issue a permit for the operation of a public pool only after completion of a department inspection that demonstrates compliance with the applicable public swimming pool rules.

**G.** Operating permits for all continuous year-round public pools shall expire on the last day of the anniversary month of the date of original issue provided the permit is issued annually in accordance with 7.18.2.12.B NMAC.

**H.** Any public pool that has been closed or not operated for a period of thirty days or more shall be granted permission to re-open only after completion of a department re-inspection that demonstrates compliance with applicable public swimming pool rules.

**I.** The designated certified operator of a seasonal or year round public pool shall be present for the seasonal pre-opening or operating permit inspection.

**J.** The certified operator shall request an inspection to receive an operating permit prior to the opening date of operation of any public pool.

**K.** Operating permits are non-transferable between facilities or persons.

[7.18.2.12 NMAC - Rp, 7.18.2.12 NMAC, 07/30/08]

#### **7.18.2.13 CERTIFIED OPERATOR REQUIREMENTS:**

**A.** All public pools, spas, and baths shall have a certified operator on staff or by contract who is available on a daily basis. The certified operator shall be responsible for providing supervision and direction to ensure the proper sanitation, safety, operation, and maintenance of the public pool, spa, or bath and all physical and mechanical equipment.

**B.** Operators of public pools shall be trained and certified through a department approved training course in swimming pool, spa or bathhouse, as applicable, sanitation and safety.

**C.** The department may grant certification following presentation and confirmation of certification from other department-approved certifying organiza-

tions.

**D.** Certifications shall expire three years following date of issue or on the expiration date for certifications issued by other approved certifying organizations.

**E.** The department will develop a training and certification program that addresses the certified operator requirements. The department shall review and maintain a list of department-approved training courses and their instructors, and department-approved certifying organizations. All approvals shall be subject to periodic review and reconsideration by the department.

[7.18.2.13 NMAC - Rp, 7.18.2.13 NMAC, 07/30/08]

**7.18.2.14 INSPECTION FREQUENCY:** The department shall inspect each public pool at least annually and shall make as many re-inspections as necessary for enforcement of the public swimming pool rules.

[7.18.2.14 NMAC - Rp, 7.18.2.14 NMAC, 07/30/08]

**7.18.2.15 SERVICE OF NOTICE:**

**A.** Notice shall be deemed to be properly served when the original or a true copy of the inspection report form or other written notice has been delivered personally to the permit holder, the permit holder's agent, or a certified operator; or when such notice has been sent by registered or certified mail to the last known address of the permit holder or certified operator on file with the department.

**B.** A copy of such notice shall be filed in the department's records.

[7.18.2.15 NMAC - Rp, 7.18.2.15 NMAC, 07/30/08]

**7.18.2.16 TEMPORARY SUSPENSION OF PERMITS:**

**A.** The department may suspend a permit at any time when it determines that there is a violation that may affect public health or safety.

**B.** Whenever a permit holder or operator has failed to comply with any of the requirements of this rule, the permit holder or operator shall be notified in writing.

**C.** The notice shall:

(1) identify and reference the conditions that violate the swimming pool rules;

(2) specify the time period within which such condition shall be brought into compliance, if any;

(3) state that failure to comply with any notice issued pursuant to the swimming pool rules may result in immedi-

ate permit suspension; and

(4) advise that the permit shall be suspended if the permit holder or operator is still out of compliance at the end of five working days following the deadline for compliance, unless a request for a hearing is delivered to the department by the permit holder within the five-day period.

**D.** Immediate suspension: notwithstanding other provisions of this regulation, whenever a department representative finds a condition in a public pool's operation that constitutes an immediate hazard to public health, welfare, or safety, the department representative may, without prior warning, notice, or hearing, issue a written notice to the permit holder or operator citing such condition. The department's notice shall state that the permit is immediately suspended and all swimming or bathing of any kind is to be immediately discontinued.

**E.** All persons receiving a permit suspension notice shall immediately comply with the notice's terms.

**F.** For immediate suspensions, suspensions upheld after a hearing, and where no request for a hearing has been received, the department shall post a sign stating that the pool is closed.

**G.** The department may also require a written compliance plan.

[7.18.2.16 NMAC - Rp, 7.18.2.16 NMAC, 07/30/08]

**7.18.2.17 TEMPORARY SUSPENSION OF OPERATOR CERTIFICATION:**

**A.** The department may suspend a certified operator's certification if:

(1) a pool he or she is operating has had its operating permit suspended or revoked; or

(2) the department determines that the operator has committed a violation that may affect public health or safety.

**B.** A department representative shall notify the certified operator in writing stating the reason the certification is subject to suspension and advising that the certification shall be suspended at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the certified operator within the five-day period.

[7.18.2.17 NMAC - Rp, 7.18.2.17 NMAC, 07/30/08]

**7.18.2.18 REINSTATEMENT OF SUSPENDED PERMITS AND CERTIFICATIONS:**

**A.** Any person whose permit has been suspended may make application for reinstatement of the permit in writing to the department. Within five working

days following receipt of such a request, a department representative shall inspect the pool or premises or both. If the applicant is in compliance with the requirements of the swimming pool rules and other applicable laws, regulations, and ordinances, the permit shall be reinstated.

**B.** Any person whose operator's certification has been suspended may make application in writing for reinstatement of their certification. Within five working days following receipt of such a request, the department shall ascertain the status of compliance with the requirements set forth in any administrative action or hearings. If the applicant is in compliance with the requirements of the public swimming pool rules, an administrative action or hearing, and other applicable laws, regulations and ordinances, the certification shall be reinstated.

**C.** The department may require a swimming pool operator or employee to attend additional training courses in pool sanitation and safety.

[7.18.2.18 NMAC - Rp, 7.18.2.18 NMAC, 07/30/08]

**7.18.2.19 REVOCATION OF PERMIT:**

**A.** A permit may be revoked when:

(1) it appears that a violation may affect public health or safety;

(2) any conditions of a permit are violated;

(3) there are willful or repeated violations of any of the requirements in the public swimming pool rules;

(4) the permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact; or

(5) the owner or the owner's agent interferes with the department's performance of its duties.

**B.** Prior to such revocation, the department shall provide an opportunity for a hearing. A department representative shall notify the permit holder in writing stating the reason the permit is subject to revocation and advising that the permit shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the permit holder within the five-day period.

**C.** Owners and operators of public pools who fail to comply with the provisions of a suspension notice or open their facility to the public without an approved permit will be subject to the penalties described in 7.18.2.56 NMAC.

[7.18.2.19 NMAC - Rp, 7.18.2.19 NMAC, 07/30/08]

**7.18.2.20 REVOCATION OF**

**POOL OPERATOR CERTIFICATION:**

**A.** A pool operator certification may be revoked when:

(1) there are willful or repeated violations of any requirements in the public swimming pool rules;

(2) any permit has been obtained through nondisclosure, misrepresentation, or misstatement of a material fact; or

(3) the certified operator interferes with the department in the performance of its duties.

**B.** Prior to such revocation:

(1) the department shall provide an opportunity for a hearing; the hearing officer shall be appointed by the secretary of the environment department;

(2) a department representative shall notify the certified operator in writing stating the reason the certification is subject to revocation and advising that the certification shall be revoked at the end of five working days following service of such notice, unless a request for a hearing is delivered to the department by the certified operator within the five-day period.

[7.18.2.20 NMAC - Rp, 7.18.2.20 NMAC, 07/30/08]

**7.18.2.21 OTHER REMEDIES:**  
[RESERVED]

**7.18.2.22 HEARINGS:**

**A.** Hearings provided for in the public swimming pool rules shall be held within 15 working days of a petitioner's delivery of a hearing request to the department.

**B.** Hearings provided for in this regulation shall be conducted in accordance with 20.1.5 NMAC.

[7.18.2.22 NMAC - Rp, 7.18.2.22 NMAC, 07/30/08]

**7.18.2.23 VARIANCE:**

**A.** The department may grant a variance from the design and construction or operation and maintenance provisions of the public swimming pool rules' through written permission for the use of alternative measures that will provide public health and safety protection that is equal to or greater than the protections provided in the public swimming pool rules. No variances shall be granted for procedural requirements, such as submitting construction or operating permit applications, including paying fees, obtaining construction or operating permits, operator certifications, or requesting a hearing.

**B.** Specific variance requests shall be made by the owner or the owner's designated agent. Designated agents shall provide written documentation signed by the owner that they are representing the owner regarding the specific vari-

ance application. All variance applications shall be signed by the owner and upon change of ownership or transfer of property, the new owner or their designated agent must re-apply for the variance.

**C.** It is the applicant's responsibility to provide all necessary information to support the request for a variance.

**D.** Any person applying for a variance from any provision of the public swimming pool rules shall do so by filing a written application with the department. Applications shall:

(1) be made on forms obtained from the department;

(2) remit applicable fee by check or money order made payable to the "water recreation facilities fund;"

(3) state the applicant's name and mailing address;

(4) state the date of the application;

(5) state the provision or provisions of this regulation for which the variance is sought;

(6) state in detail the extent to which the applicant wishes to vary from the provision or provisions;

(7) state the period of time for which the variance is sought;

(8) state why the applicant believes the variance is justified;

(9) be accompanied by any relevant documents or material which the applicant believes would support the application for a variance; and

(10) contain other relevant information the department may request.

**E.** Within twenty working days following receipt of a completed variance application, the department shall grant the variance, grant the variance subject to conditions, or deny the variance. The action taken by the department shall be by written order, a copy of which shall be sent to the applicant. The order shall:

(1) state the applicant's name and address;

(2) state the date the order is made;

(3) describe the location of the public pool or public bath; and

(4) state the department's decision and its reasons.

**F.** If a variance is granted, the order will state the effective period of time and any conditions that apply.

**G.** All variances shall be reviewed at the time of the annual operating permit inspection to determine whether all variance conditions have been met. If conditions of the variance have not been met, an operating permit shall not be issued.

**H.** Petitioners who are dissatisfied with the department's decision may request a hearing from the department secretary.

(1) The request shall be made in writing to the department secretary within 15 calendar days after notice of the department's decision has been received by the petitioner.

(2) Unless a request has been received within the 15 calendar day period, the department's decision shall be final.

(3) If a request has been received within the 15 calendar day period, the department secretary or his/her designated representative shall hold a hearing within 15 working days after the receipt of the request.

**I.** The department shall notify the petitioner by certified mail of the date, time and place of the hearing.

**J.** In the hearing, the burden of proof shall be upon the petitioner.

[7.18.2.23 NMAC - Rp, 7.18.2.23 NMAC, 07/30/08]

**7.18.2.24 VOIDING OF VARIANCES:**

**A.** An approved variance shall be void one year after the date of approval if the permitted activities granted thereby have not been utilized. If the department voids a variance for any reason, the department will serve written notice on the permit holder.

**B.** The department may void a variance if conditions of the variance have not been met, or if subsequent events show that the variance has created or may create conditions hazardous to the public health, safety, or welfare.

**C.** An approved variance shall be void if it is utilized in a way that violates the terms and conditions of the variance. Voiding a variance is in addition to, and not instead of, other remedies available to the department at any time for violation of the public swimming pool rules.

**D.** All variances shall become void upon change of ownership. Upon change of ownership, the new owner shall re-apply for a variance.

**E.** Any person who has been granted a variance shall sign a department approved indemnification and release of liability statement form. Variances shall not be valid unless and until the department receives a completed and signed indemnification and release of liability statement form back from the applicant.

[7.18.2.24 NMAC - Rp, 7.18.2.24 NMAC, 07/30/08]

**7.18.2.25 RIGHT OF ENTRY:**

**A.** Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

**B.** When entry is denied

by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a public pool is located;

(2) have a right of entry on any premises where any records required by the public swimming pool rules or by permit condition are kept;

(3) have access to and copy any records that the public swimming pool rules or a permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit or variance condition; and

(5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit or variance condition.

[7.18.2.25 NMAC - Rp, 7.18.2.25 NMAC, 07/30/08]

**7.18.2.26 to 7.18.2.50  
[RESERVED]**

**7.18.2.51 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[7.18.2.51 NMAC - Rp, 7.18.2.51 NMAC, 07/30/08]

**7.18.2.52 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.

[7.18.2.52 NMAC - Rp, 7.18.2.52 NMAC, 07/30/08]

**7.18.2.53 REFERENCES IN OTHER REGULATIONS:**

Any reference to the public swimming pool regulations or to any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.2.53 NMAC - Rp, 7.18.2.53 NMAC, 07/30/08]

**7.18.2.54 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.2.54 NMAC - Rp, 7.18.2.54 NMAC, 07/30/08]

**7.18.2.55 COMPLIANCE WITH OTHER REGULATIONS:**

Compliance with the public swimming pool rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local reg-

ulations.

[7.18.2.55 NMAC - Rp, 7.18.2.55 NMAC, 07/30/08]

**7.18.2.56 PENALTY:**

Any person who violates any provision of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.2.56 NMAC - Rp, 7.18.2.56 NMAC, 07/30/08]

**7.18.2.57 LIMITATION OF DEFENSE:**

The existence of a valid permit for the installation, modification or operation of a pool shall not constitute a defense to a violation of any section of this rule, except the requirement for obtaining a permit.

[7.18.2.57 NMAC - Rp, 7.18.2.57 NMAC, 07/30/08]

**NEW MEXICO  
ENVIRONMENTAL  
IMPROVEMENT BOARD**

**TITLE 7 HEALTH  
CHAPTER 18 SWIMMING POOLS  
PART 3 PUBLIC SWIMMING POOLS, SPAS AND BATHS:  
DESIGN AND CONSTRUCTION**

**7.18.3.1 ISSUING AGENCY:**

New Mexico Environmental Improvement Board.

[7.18.3.1 NMAC - Rp, 7.18.3.1 NMAC, 07/30/08]

**7.18.3.2 SCOPE:**

Owners and operators of public swimming pools, public spas, public baths, or other public bathing attractions.

[7.18.3.2 NMAC - Rp, 7.18.3.2 NMAC, 07/30/08]

**7.18.3.3 STATUTORY AUTHORITY:**

NMSA 1978, Sections 74-1-1 through 74-1-16.

[7.18.3.3 NMAC - Rp, 7.18.3.3 NMAC, 07/30/08]

**7.18.3.4 DURATION:**

Permanent.

[7.18.3.4 NMAC - Rp, 7.18.3.4 NMAC, 07/30/08]

**7.18.3.5 EFFECTIVE DATE:**

07/30/08, unless a later date is cited at the end of a section.

[7.18.3.5 NMAC - Rp, 7.18.3.5 NMAC, 07/30/08]

**7.18.3.6 OBJECTIVE:**

To protect the public health and safety by estab-

lishing standards and provisions for the regulation of public swimming pools, spas, baths, and other public bathing attractions.

[7.18.3.6 NMAC - Rp, 7.18.3.6 NMAC, 07/30/08]

**7.18.3.7 DEFINITIONS:**

Unless otherwise defined in the public swimming pool rules, the words and phrases used in this rule have the same meanings as in 7.18.2.7 NMAC, Public Swimming Pools, Spas and Baths: General Provisions.

[7.18.3.7 NMAC - Rp, 7.18.3.7 NMAC, 07/30/08]

**7.18.3.8 ADOPTION BY REFERENCE:**

Outside standards, listings and publications referenced in this regulation are incorporated as part of this regulation.

[7.18.3.8 NMAC - Rp, 7.18.3.8 NMAC, 07/30/08]

**7.18.3.9 ENFORCEMENT AUTHORITY:**

A. Private pools shall not be subject to the provisions of this rule or to 7.18.2 through 7.18.5 NMAC.

B. Department representatives shall be responsible for the enforcement of this regulation.

[7.18.3.9 NMAC - Rp, 7.18.3.9 NMAC, 07/30/08]

**7.18.3.10 GENERAL AND STRUCTURAL DESIGN:**

A. Public pools and all appurtenances shall be constructed of materials that:

(1) are nontoxic to humans and the environment;

(2) are impervious and durable;

(3) will withstand design stresses, and

(4) will provide a watertight structure with a smooth and easily cleanable surface without cracks or joints, excluding structural joints.

B. The department may require demonstration of structural integrity from a structural engineer licensed in the state of New Mexico.

C. The structural design and materials used for public pools shall be in accordance with the rules, regulations and generally accepted industry engineering practices and methods prevailing at the time of original construction.

D. The interior surfaces of a public pool or bath that are filled with or designed to contain water shall not be made of wood. The provisions of this subsection shall apply to public pools or baths constructed or modified after the effective date of these rules.

E. Equipment for a public pool including, but not limited to, pumps,

filters, skimmers and chemical feeders shall be NSF/ANSI 50 certified. Pool equipment shall bear the mark of an ANSI-accredited, independent, third party conformity assessment organization such as the NSF, underwriters laboratories, inc. (UL), edison testing laboratories (ETL) or other organizations acceptable to the department.

**F.** The use of earth to finish the interior surface of the public pool, which is filled with or designed to contain water, is prohibited. Washed sand or other department-approved material, if applied to create a beach pool environment shall only be applied over an impervious interior public pool surface. The interior material shall be appropriate for pool use, and controlled to not adversely affect the proper filtration, disinfection, maintenance, safety, sanitation, water clarity and operation of the pool. If washed sand or department approved material is used, positive up flow circulation through the material shall be provided as necessary to assure that sanitary conditions are maintained at all times.

**G.** The colors, patterns, or finishes of the interior surfaces that contain water shall not obscure the existence or presence of objects or surfaces within the public pool or bath. All new public pool interior finishes shall be white or lightly colored except for:

(1) decorative wall tiles and depth markings when such tiles are installed at the top of the pool wall;

(2) racing lane markings (painted or tiled, maximum twelve inches wide);

(3) turn targets;

(4) safety markers; and,

(5) other decorative items as approved by the department.

**H.** A hydrostatic relief valve or a more extensive hydrostatic relief system shall be installed if necessary to prevent ground water pressure from displacing or otherwise damaging a pool or spa.

**I.** The surfaces within a pool, intended to provide footing for users, shall have a slip-resistant surface to reduce the chance of a fall.

(1) The roughness or irregularity of such surfaces shall not cause injury to the feet during normal use.

(2) Decorative floor tiles shall be sized, installed and maintained so as to not create a safety hazard.

**J.** Roofs or canopies over pools shall be constructed so that water runoff, dirt, debris, or other forms of pollution do not drain or fall into the pool.

**K.** All plumbing shall be sized, installed and maintained according to applicable state regulations and local plumbing codes. Pool owners and operators shall provide the department with written evidence of compliance with all plumbing codes from a licensed plumbing inspector.

**L.** All electrical wiring, equipment and installation, including the grounding of pool components shall conform to all applicable state regulations and local electrical codes. Pool owners and operators shall provide the department with written evidence of compliance with all electrical codes from a licensed electrical inspector.

**M.** Any public pool that is designed or used for more than one use or classification as defined by the public swimming pool rules, 7.18.2 through 7.18.5 NMAC, shall comply with the most stringent requirements in the public swimming pool rules.

**N.** Public pools shall comply with Title 42, Sections 12101 et. seq. of the United States Code, the Americans with Disabilities Act.

**O.** When a public pool, spa or bath is modified it shall comply with the provisions of the public swimming pool rules', 7.18.2 through 7.18.5 NMAC, unless otherwise specified in these rules.

[7.18.3.10 NMAC - Rp, 7.18.3.10 NMAC, 07/30/08]

#### 7.18.3.11 DIMENSIONS:

**A.** This section shall apply to all new construction and public pools where the interior wall surface or bottom of the public pool is being modified. Existing pools shall comply with the provision in effect at the time of original construction or the rule in effect at the time of the modification, whichever is more stringent.

**B.** Public pools shall have no sharp edges or protrusions where walls meet at an acute angle. Public pools shall be shaped to provide for complete water recirculation and mixing.

**C.** There shall be no interior walls, ledges or curbs within the perimeter walls of a public pool.

**D.** The inside wall surface of a pool shall be vertical, except where coved construction is used between the sidewalls and the bottom of the pool.

(1) In coved construction, the radius of curvature in an area less than five feet deep shall not exceed six inches at a depth of three feet six inches and shall not exceed two feet at a depth of five feet or greater.

(2) There shall be a uniform transition in the cove throughout all depths of the pool.

**E.** The slope of the bottom of any part of the pool shall not be more than one foot of fall for every twelve horizontal feet where the water depth is no more than five feet and the slope shall be constant throughout. Floor slopes in the transition area between the deep and shallow portions of the pool shall not exceed one foot of fall in three horizontal feet.

[7.18.3.11 NMAC - Rp, 7.18.3.11 NMAC, 07/30/08]

#### 7.18.3.12 MARKINGS AND LIFELINES:

**A.** A lifeline shall be provided two feet into the shallow portion of the pool from the break in grade between the deep and shallow portions of the pool. A lifeline is not required where there is a uniform slope.

(1) The lifeline shall be securely fastened to wall anchors. Wall anchors shall be of corrosion-resistant materials and shall be recessed or have no projections which constitute safety hazards when the lifeline is removed.

(2) The lifeline shall be marked with visible floats at no greater than two foot intervals.

(3) The line shall be of sufficient size and strength to offer a good handhold and to support loads normally imposed by bathers;

(4) The lifeline shall remain in place except when pool use is restricted to lap swimming by competent swimmers or to supervised swimming instruction.

**B.** The break in grade of the pool bottom shall be marked with a four inch minimum width of floor tile or painted stripe of a color contrasting with the bottom, for the entire width of the pool. Where there is a uniform slope, a stripe is not required.

**C.** The depth of water (in feet) shall be plainly and conspicuously marked above or at water level on the vertical pool wall except for splash-out (deck level overflow) pools and on the top of the coping or edge of the walk within eighteen inches of the water edge. Depth markers shall be placed on each side and on each end of a pool.

(1) Depth markers shall be placed at the maximum and minimum depth points and at one foot depth increments in between the minimum and maximum depth points.

(2) Depth markings shall be spaced at no more than fifteen foot intervals.

(3) Pools shall have depth markings at slope breaks.

(4) Depth markings shall be at least four inches in height and of a color contrasting with the background.

**D.** Public spa pools with a uniform maximum depth shall have the maximum water depth indicated.

(1) Public spa pools providing perimeter seating shall have contrasting permanent marking no less than two inches wide on the top surface along the front leading edge of the bench.

(2) Public spa pools shall have depth markers spaced at no more than ten foot intervals, but in no case fewer than two

depth markers per spa, regardless of the spa size or shape.

**E.** Non-slip markers, with the words "No Diving" shall be placed between the depth markers on the walkway where the water depth is less than five feet at a public pool other than a spa pool or a wading pool. "No Diving" symbols that are not less than four inches high shall be placed on the walkway together with "No Diving" markers. Other locations for symbols and markers may be approved by the department.

[7.18.3.12 NMAC - Rp, 7.18.3.12 NMAC, 07/30/08]

#### **7.18.3.13 LIGHTING:**

**A.** Sufficient lighting shall be provided to ensure visibility of all portions of the pool, including the bottom, at all times. Owners shall provide protective shielding for all lighting fixtures above walking surfaces and pool areas.

**B.** All public pools shall have underwater lighting of not less than 0.5 watts per square foot of pool water surface area.

**C.** Area lighting shall provide a minimum of three (3) foot candles of illumination level at the water surface and the deck. Area lighting shall be directed to minimize glare on the pool water surface. If the pool is closed after dark, the illumination level is permitted to be lowered to no less than 3 foot-candles.

**D.** For pools built prior to the effective date of the rules and where underwater lighting is not employed, the pool water surface and the adjacent deck area shall have an illumination of no less than fifteen (15) foot candles. If the pool is closed after dark, the illumination level is permitted to be lowered to no less than 3 foot-candles.

[7.18.3.13 NMAC - Rp, 7.18.3.13 NMAC, 07/30/08]

#### **7.18.3.14 INDOOR POOL VENTILATION:**

**A.** Ventilation shall be provided for indoor public pools to minimize condensation and odors.

**B.** All newly constructed and modified indoor public pools, except class D public pools, shall be constructed, equipped and operated to maintain relative humidity levels between forty and sixty percent at all times. Existing indoor public pools and baths shall maintain a minimum of four air changes per hour.

**C.** For public pools and baths constructed prior to the effective date of the rules, the indoor public pool area shall be ventilated to the outside without returning air to the central heating system, or air shall be recirculated through a dehu-

midifying system. If water is separated from the air for re-use in the pool, it shall be returned via the circulation filtration system prior to entering the pool.

**D.** For all indoor public pools or hot springs public baths, the building ventilation system shall prevent air in the bathroom from drifting or flowing into other areas and the exhaust air from the indoor public pool area shall not be vented to any ancillary facility.

**E.** The department may require indoor public pools to install a relative humidity transmitter, or an approved equivalent, to monitor the relative humidity. [7.18.3.14 NMAC - Rp, 7.18.3.14, 07/30/08]

#### **7.18.3.15 LADDERS, RECESSED STEPS, STAIRWAYS AND RAMPS:**

**A.** All public pools, except for spray pads or wading pools, shall have a ladder, set of recessed steps or stairs located at fifty foot intervals around the pool perimeter.

**B.** There shall be at least one set of stairs at the shallow end of the pool, except in zero depth pools, and pools exclusively used for competition events, wading pools, or spas less than twenty-four inches deep.

**C.** Pools greater than thirty feet in width shall provide recessed steps, ladders or stairs on both sides of the deep area. There shall be at least one stairway at the shallow end of the pool. Ladders may be provided in lieu of stairs in pools where depth is five feet or greater.

**D.** Ladder treads, recessed step surfaces and stairs shall have slip-resistant surfaces.

(1) Ladders and recessed steps shall have two handrails. The outside diameter of the ladder rail shall be between one inch and two inches.

(2) Stairs shall have at least one handrail accessible from all points on the stairs.

(3) There shall be a clearance of not more than five inches or less than three inches between the ladder and the pool wall below the water line.

**E.** If recessed steps are provided, they shall be easy to clean and shall drain into the pool to prevent the accumulation of dirt. Recessed steps shall have a minimum tread of five inches and a minimum width of fourteen inches.

**F.** Ladders, recessed steps and stairways shall be located to not interfere with racing lanes.

**G.** Stair treads shall have a minimum unobstructed horizontal tread depth of ten inches and a minimum unobstructed surface area of two hundred forty

square inches.

**H.** Riser heights on steps shall be between seven and twelve inches and shall be uniform throughout except for the bottom riser when used as a bench or seat.

**I.** Except for spa pools, steps for entering or leaving the pool shall be a minimum of four feet wide, unless corner or circular steps are used. If corner or circular steps are used, the maximum radius of the bottom steps shall be forty-two inches, but no projection shall create a safety hazard.

**J.** The outer two inches edge of the stair tread shall be constructed of a material that contrasts with the color of the stairs and is clearly visible to bathers.

**K.** A side handrail extending up and above and returning to the horizontal surface of the pool deck, curb or coping shall be provided at each side of each ladder or set of recessed steps.

**L.** The leading edge of the handrail shall be no more than eighteen inches, plus or minus three inches, horizontally from the vertical plane of the bottom riser, where applicable.

**M.** Ramp entry into the pool shall meet the following requirements.

(1) Handrails shall extend over the deck edge and extend to the bottom of the ramp for entering and leaving the pool.

(2) Ramp edges protruding into the pool shall be of a contrasting color.

[7.18.3.15 NMAC - Rp, 7.18.3.15 NMAC, 07/30/08]

#### **7.18.3.16 SPECIAL DESIGN FEATURES:**

**A.** If waterfalls or rockery are installed at a public pool, the following requirements shall apply.

(1) If waterfalls or rockery are to be installed at or adjacent to a pool and the height of the feature is twelve inches or less above the water level of the pool:

(a) waterfalls may spill directly into the pool from the side wall;

(b) rockery shall come no closer than four feet from the edge of the pool, at pools that are not required to have lifeguards; or

(c) rockery is allowed up to the pool edge as long as the rockery feature does not cover more than five percent of the pool deck perimeter at pools that are required to have lifeguards.

(2) If waterfalls or rockery are to be installed at or adjacent to a pool and the height of the feature is greater than 12 inches and less than thirty inches above the water level of the pool:

(a) waterfalls and rockery shall not be closer than eight feet from the edge of the pool at pools that are not required to

have lifeguards; or

(b) waterfalls and rockery are allowed up to the pool edge as long as the waterfall or rockery does not cover more than five percent of the pool deck perimeter at pools that are required to have lifeguards.

(3) If waterfalls or rockery are to be installed at or adjacent to a pool and the height of the feature is greater than 30 inches above the water level of the pool:

(a) waterfalls and rockery shall come no closer than fifteen feet from the edge of the pool at pools that are not required to have lifeguards; or

(b) waterfalls and rockery are allowed up to the pool edge as long as the waterfall or rockery does not occupy more than five percent of the pool deck perimeter at pools that are required to have lifeguards.

B. Plants and vegetations may come no closer than four feet from the edge of the pool.

C. Where waterfalls are provided at or adjacent to the deep areas of public pools, a minimum four foot wide walkway surrounding it.

D. Waterfalls that commingle with the pool water shall conform to water quality and treatment requirements established for the pool. The department may require additional disinfection capability to address anticipated increased demand for and aerosolization of the disinfectant.

E. Flows shall not create turbulence that may create a safety hazard or reduce visibility in the pool.

[7.18.3.16 NMAC - Rp, 7.18.3.16 NMAC, 07/30/08]

**7.18.3.17 DIVING AREAS:**

A. In a public pool where diving and swimming are allowed, the area of the pool where diving is permitted shall be:

(1) separated from the main swimming area by a lifeline in rectangular pools; and

(2) in the case of a T, L or Z shaped pool, in a recessed area forming one of the legs of the T, L or Z, which is separated from the main swimming area by a lifeline.

B. Public pools used for diving shall comply with the following water depths and lateral and vertical clearances.

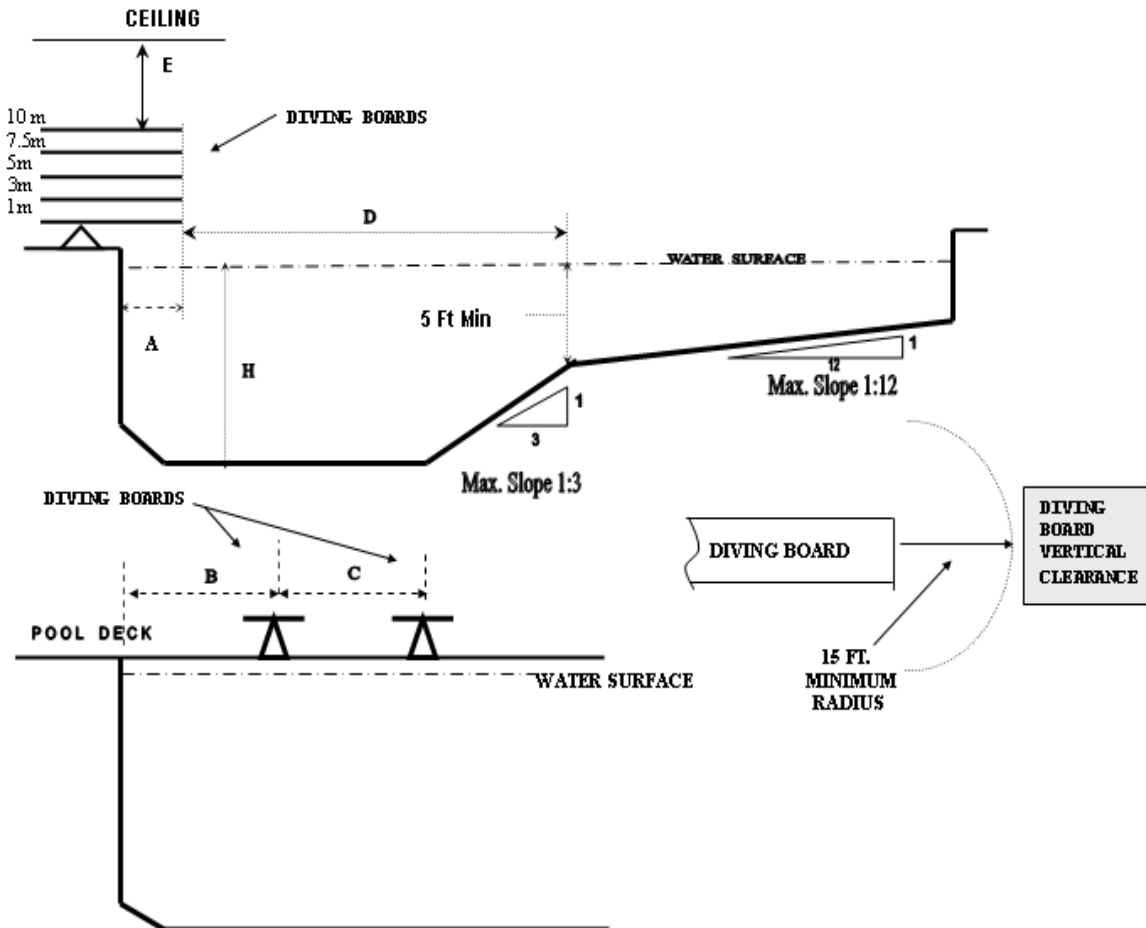
(1) Diving areas shall have the minimum dimensions and clearances as specified in 7.18.3.18 and 7.18.3.19 NMAC of this rule.

(2) The area of vertical clearance, as specified in dimension E in 7.18.3.18 NMAC of this rule, shall be a cylinder with a minimum radius of fifteen feet. The center point of the cylinder shall be located on the edge of the diving end of the diving board, at a point one half of the width of the diving board as specified in 7.18.3.18 NMAC of this rule.

(3) If the diving areas of the pool are not in compliance with the requirements of this section, the diving facility or equipment shall be removed or be brought into compliance with this section as soon as practical. Any use of the diving areas shall not be permitted until such time as the diving facility or equipment is brought into compliance with this section.

[7.18.3.17 NMAC - Rp, 7.18.3.17 NMAC, 07/30/08]

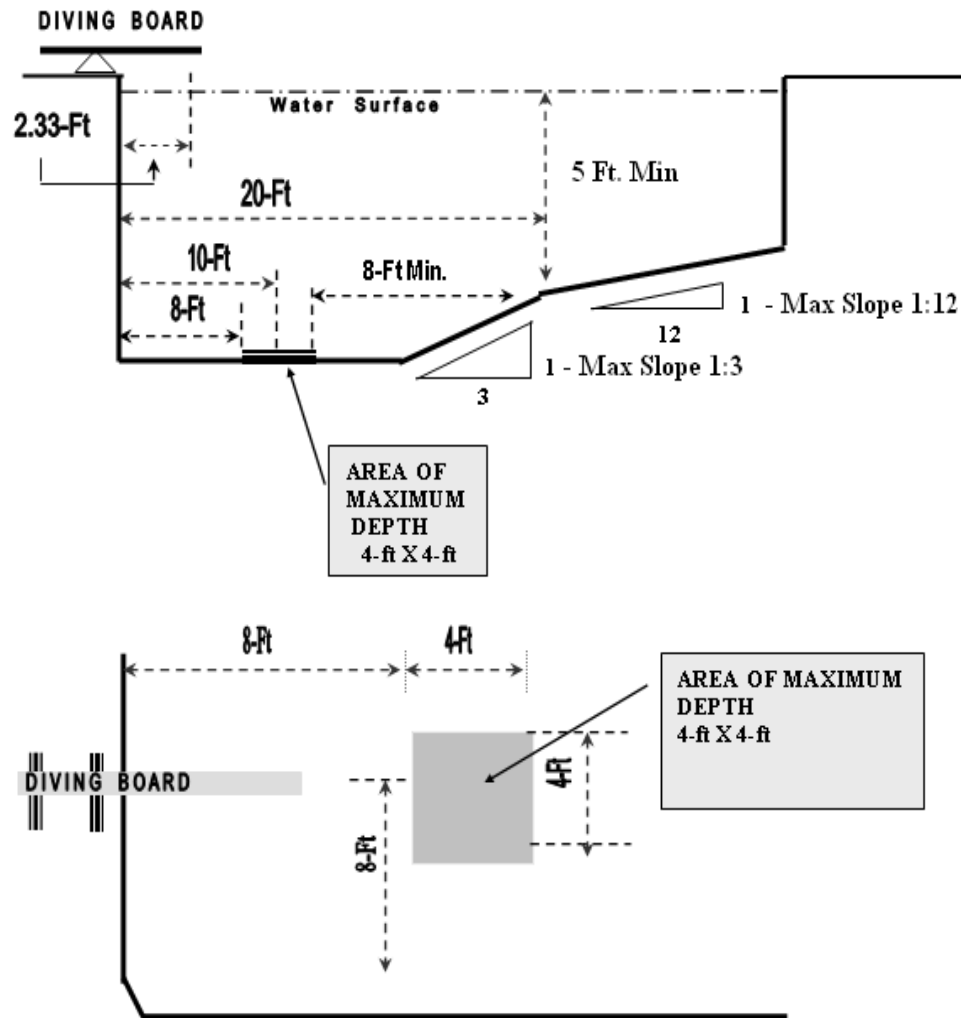
**7.18.3.18 DIVING BOARD AND PLATFORM DIMENSIONS AND REQUIREMENTS:**



Diving Board or Platform	A	B	C	D	E	H
One (1) meter board	6	10	10	29	16	12
One (1) meter platform	4	7.5	10	26	10	11
Three (3) meter board	6	12	10	34	16	13
Three (3) meter platform	4	9.5	10	31	10	11
Five (5) meter platform	5	14	10	34	10	13
Seven and one half (7.5) meter platform	5	15	10	36	10	15
Ten (10) meter platform	6	17	12	45	10	17

[7.18.3.18 NMAC - Rp, 7.18.3.18 NMAC, 07/30/08]

**7.18.3.19 DECK LEVEL DIVING BOARD DIMENSIONS AND REQUIREMENTS:**



[7.18.3.19 NMAC - Rp, 7.18.3.19 NMAC, 07/30/08]

**7.18.3.20 DIVING EQUIPMENT:**

- A. Diving boards, towers and platforms in excess of three meters in height shall comply with the dimensional design requirements of the U.S. diving, national federation of state high school associations (NFSHSA) or equivalent standards.
- B. Supports for diving equipment, such as platforms, stairs and ladders shall be designed to carry anticipated loads. Stairs and ladders shall be of corrosion-resistant material and easily cleanable with slip-resistant tread.
- C. Diving boards and diving platforms shall be protected with forty-two inch high guardrails and one intermediate rail, both extending at least to the water edge when one meter or more above the water.
- D. Diving equipment shall be designed for swimming pool use and shall be installed in accordance with the manufacturer's recommendations.
- E. Pool owners and operators shall obtain diving equipment installation instructions and specifications for each unit from



the manufacturer and provide it to the department upon request.

**F.** A label shall be permanently affixed to the diving equipment and shall include:

- (1) manufacturer's name and address;
- (2) board equipment length;
- (3) identification regarding diving or jump board;
- (4) fulcrum setting specifications (if applicable);
- (5) reference to the current year of the applicable standards; and,
- (6) reference to the applicable articles in the applicable standards.

**G.** Diving equipment shall have slip-resistant tread surfaces.

**H.** Diving equipment shall be permanently anchored to the pool deck. [7.18.3.20 NMAC - Rp, 7.18.3.20 NMAC, 07/30/08]

### 7.18.3.21 POOL SLIDES:

**A.** Pool slides shall comply with the requirements of the U.S. consumer product safety commission safety standards for swimming pool slides as published in the Code of Federal Regulations Vol. 16, Part 1207.

**B.** Pool slides shall:

- (1) be constructed of sturdy and corrosion-resistant material;
- (2) be securely fastened to the pool deck;
- (3) have a ladder equipped with slip-resistant treads and rigidly attached handrails;
- (4) have runways which are smooth, of one piece, and free of cutting, pinching, puncturing or abrasion hazards; and
- (5) have a sliding surface with side rails on both sides that are no less than two inches in height.

**C.** Pool slide runways shall be water lubricated when in use.

**D.** Pool slides higher than twelve feet above the deck are prohibited.

**E.** Water depths shall be measured at a point four and one half feet beyond the end of the slide and are based on slide height. The required water depths are as follows:

- (1) a slide that is greater than three feet high to seven and one half feet high shall have a minimum water depth of four feet;
- (2) a slide that is greater than seven and one half feet high to eight feet high shall have a minimum water depth of five feet;
- (3) a slide that is greater than eight feet high to eleven feet high shall have a minimum water depth of five than one-half feet;
- (4) a slide that is greater than

eleven feet high to twelve feet high shall have a minimum water depth of six feet.

**F.** Pool slides shall be equipped with the warning signs found in 7.18.4.26 NMAC, Required Signs.

**G.** Portable toddler slides, three feet or less, shall have entry into water depths that are recommended by the manufacturer and approved by the department. Water depths for slide entry are determined by but not limited to platform height, length of slide, and bather weight.

[7.18.3.21 NMAC - Rp, 7.18.3.21 NMAC, 07/30/08]

### 7.18.3.22 WATERSLIDES:

**A.** A waterslide shall consist of one or more flumes, splash pools or slide runouts, a pump reservoir and facilities for the sanitization, filtration and chemical treatment of the water.

**B.** The structural design of a water slide and the materials used in its construction shall conform to generally accepted structural engineering practices, and shall provide a sound, durable structure that will safely sustain all applicable loads and pressures. Pool owners and operators shall provide the department, upon request, supporting information and calculations from a New Mexico registered engineer or by a licensed engineer of appropriate competency employed by the designer or manufacturer of the water slide and its structure.

**C.** Any components or accessories of a water slide that, under normal conditions of use, come into contact with bathers shall be assembled, arranged and finished so that their external surfaces and edges do not present an injury or hazard to the skin of users under casual contact.

**D.** Waterslide surfaces shall be inert, nontoxic, smooth and easily cleaned.

**E.** All curves and turns in a flume shall be:

- (1) designed so that the contact of users with the walls of the flume does not present a hazard;
- (2) constructed so that the forces on the bathers keep them safely inside the flume under all foreseeable circumstances of operation; and
- (3) be designed and constructed so that the speed of the bathers does not reach a point at which a safe equilibrium of dynamic forces cannot be maintained on any curve or turn in the flume.

**F.** The construction, dimensions and methods of mechanical attachment of a flume shall provide a smooth and continuous surface through the entire length of the flume. Any misalignment of joints in a sectional flume shall not exceed one-sixteenth inch and the upstream side of the joint on the rider's path shall be higher than the downstream side of the

joint.

**G.** The walls of all flumes shall be designed so that the continuous and combined action of hydrostatic, dynamic and static loads, as well as normal environmental deterioration do not damage the flume bed to the extent of creating a structural failure that presents a hazard of injury to users or that requires unreasonable repairs that may weaken the structural integrity of the flume. Water slides shall be maintained in good operating condition.

**H.** Runout waterslide exits shall be designed to ensure that bathers enter the slide runout at a safe speed and angle of entry, and shall be designed with adequate length, water depth and slope to bring the user to a safe stop.

(1) Flume or slide exits shall be at least six feet apart.

(2) Waterslide runouts, if used, shall have an exit opening or step, unless one or both of the walls of the run out are not more than sixteen inches in height from the inside or eighteen inches from the outside.

**I.** The flume exit of a water slide into a splash pool shall be designed with a slide exit system that provides for safe entry into the splash pool or slide run out. Current practices for safe entry include a water backup, a deceleration distance and body attitude control. Other methods are acceptable as long as safe exit velocities and proper body attitudes are assured under normal use.

**J.** The distance between the sidewall of the pool and that portion of the flume exit nearest the wall shall not be less than five feet at the point of exit or a greater distance as specified by the manufacturer.

**K.** The flume and any adjacent parallel flume, exiting to a common pool, shall not be less than six feet apart at the point of exit, as specified in 7.18.3.23 NMAC, or a greater distance if specified by the manufacturer.

**L.** The centerline of a flume and the centerline of any adjacent, but non-parallel, flume exiting into a common pool shall not intersect for a distance of twenty five feet from the exit of each of the flumes, as specified in 7.18.3.23 NMAC, Waterslide and Flume Exit Requirements, in this rule.

**M.** Except as otherwise provided in this subsection, the water depth in a splash pool at the end of the flume exit shall be a minimum of three and one half feet from the normal operating water level to the pool bottom. This depth shall be maintained for a distance of not less than twenty feet from the point of the first obstruction, or not less than thirty feet if the point of exit is even with the normal operating water level. The department may waive

these requirements if a special exit system or velocity reduction technique is used that ensures a safe exit from the flume and safe entry to the splash pool.

N. If steps are provided instead of exit ladders, a handrail shall be provided at the steps opposite the point of exit from each flume. Handrails or ladder rails shall not be located in a direct line from the point of exit of the flume or slide.

O. A deck shall be provided along the exit side of the splash pool and along the other two sides of the pool.

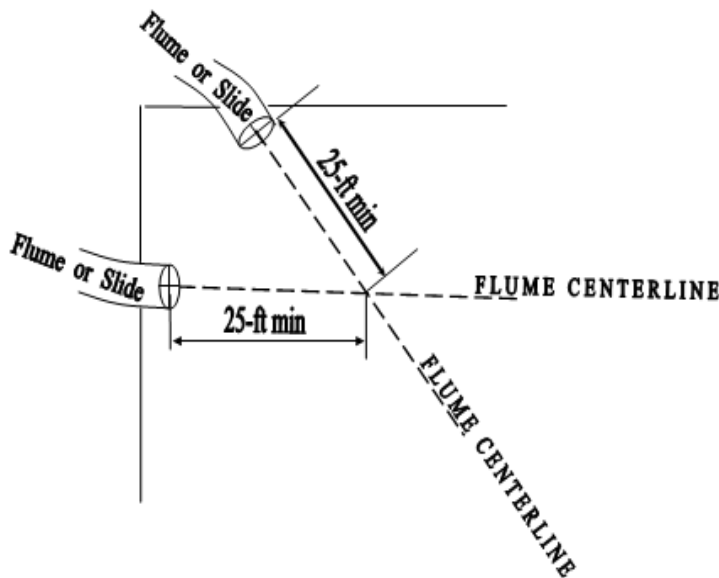
P. A concrete walkway, steps, stairway or ramp shall be provided between the splash pool and the top of the flume. The means of access shall:

- (1) not retain standing water;
- (2) not be less than three feet wide;
- (3) have handrails;
- (4) have a slip-resistant surface; and
- (5) be separated from the waterslide structure by an effective physical separation or located to prevent users from contacting the waterslide structure.

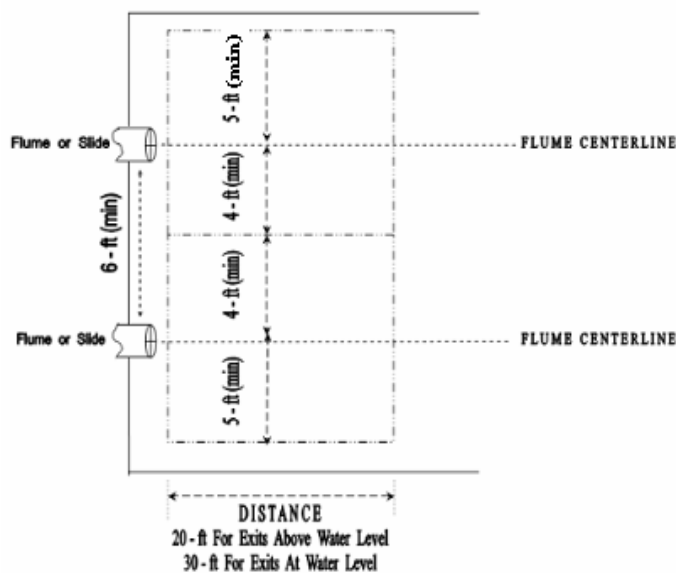
[7.18.3.22 NMAC - Rp, 7.18.3.22 NMAC, 07/30/08]

**7.18.3.23 WATERSLIDE AND FLUME EXIT REQUIREMENTS:**

A. Intersecting slides or flumes:



B. Parallel slides or flumes:



[7.18.3.23 NMAC - Rp, 7.18.3.23 NMAC, 07/30/08]

**7.18.3.24 PUMP RESERVOIRS AND CONTROL OF WATER:**

- A. Splash pool shall maintain a constant water depth.
- B. The interior of pump reservoirs shall be watertight.

C. Pump reservoirs shall be accessible only to authorized persons.

D. Intakes to the slide pumps shall be designed to allow cleaning without danger of trapping the operator.

E. A surge-free automatic water makeup system with a manual override shall be provided and operated so that the normal operating water level of the splash pool is maintained at all times. An approved backflow prevention device shall be provided on makeup water system.

F. The velocity of water at the weir or inlet grate shall not exceed one and one half feet per second.  
[7.18.3.24 NMAC - Rp, 7.18.3.24 NMAC, 07/30/08]

#### 7.18.3.25 SPRAY PADS AND INTERACTIVE FOUNTAINS:

A. The spray pad shall be equipped, at its lowest point, with an unvalved drain of sufficient capacity and designed to prevent the accumulation of water.

B. If the spray pad uses recirculated water, then filtration and disinfectant feed systems shall be provided as required by this regulation.

(1) The time taken to completely recirculate and filter the entire volume of water in the system once shall be no greater than thirty minutes.

(2) A disinfection residual shall be maintained as specified in 7.18.4.11 NMAC, Pool Water Quality.

C. spray pads that do not recirculate water are exempt from the requirements for bathhouses and toilet facilities in the swimming pool rules.

D. Surfaces within the spray pad or interactive fountains and adjacent decks shall be watertight, slip resistant, and withstand design stresses.  
[7.18.3.25 NMAC - Rp, 7.18.3.25 NMAC, 07/30/08]

#### 7.18.3.26 ACTIVITY POOLS:

A. Water play structures used in activity pools shall be designed and maintained so that their surfaces are smooth, nontoxic and easily cleanable.

B. The devices shall not pose a safety or health hazard to users and shall not interfere with the circulation or disinfectant levels of the water.

C. Activity pools shall meet all the appropriate design, construction, operation and maintenance requirements of a public pool.  
[7.18.3.26 NMAC - Rp, 7.18.3.26 NMAC, 07/30/08]

#### 7.18.3.27 WAVE POOLS:

A. The generation of waves more than three feet in height in a wave pool, regardless of pool depth, shall

not continue for more than fifteen minutes at a time.

B. The wave pool shall not be used if the main drain is not clearly visible from the deck with the wave generating equipment turned off.

C. Bathers shall gain access to the wave pool at the shallow or beach end only.

(1) The side deck areas of the pool shall be enclosed by a fence or other comparable barrier accessible to authorized personnel only.

(2) A sign shall be posted indicating that this area is not open to the public.

D. Properly sized U.S. Coast Guard approved life jackets shall be provided free for use by bathers who request them.

E. Each pool attendant and lifeguard station shall have a clearly labeled and readily accessible emergency shut-off switch for the control of the wave action system.

F. An audible warning system shall be provided to alert bathers at the beginning of wave generation.

G. Recessed steps and handrails shall be provided at one or more locations along the wall of the wave pool.

(1) The recessed steps and handrails shall extend down the wall so they will be accessible during wave generation at the lowest water level.

(2) The distance between the handrail and the wall shall not be more than five inches or less than three inches.  
[7.18.3.27 NMAC - Rp, 7.18.3.27 NMAC, 07/30/08]

#### 7.18.3.28 WATERCOURSE RIDES:

A. Handrails, steps, stairs and booster inlets for watercourse rides shall not protrude into the watercourse.

B. The watercourse shall be no less than eight feet wide or more than three and one half feet deep.

C. A department approved method of exit shall be provided not less than every two hundred feet along the watercourse.

D. A deck shall be provided along at least one side of the watercourse.  
[7.18.3.28 NMAC - Rp, 7.18.3.28 NMAC, 07/30/08]

#### 7.18.3.29 WADING POOLS:

A. A wading pool shall have:

(1) a maximum water depth of twenty four inches;

(2) a slope which does not exceed one foot in 12 feet;

(3) a slip-resistant finish;

(4) a maximum turnover time as

specified in Subsection B of 7.18.3.37 NMAC, Circulation System, in this rule;

(5) a separate pool with an independent circulation system and physically separated from any other pool; and

(6) at least two inlets.

B. Adequate sanitary facilities shall be available in the vicinity of the wading pool, as required in 7.18.3.49 NMAC, Bathhouse and Toilet Facilities, in this rule.

[7.18.3.29 NMAC - Rp, 7.18.3.29 NMAC, 07/30/08]

#### 7.18.3.30 PUBLIC BATHS:

A. Public baths shall only be of the fill-and-draw or flow-through type.

B. Public baths shall meet all of the requirements for construction, operation, and maintenance of the public bath as specified in this rule, 7.18.2 NMAC, and 7.18.4 NMAC, except:

(1) A fill-and-draw public bath shall be exclusively for one use at a time, after which the bath shall be completely drained, cleaned, and disinfected prior to the next use.

(2) Flow-through public baths will be exempt from the requirements for recirculation, filtration and disinfection if the flow rate of water through the bath from natural or developed sources completely replaces the entire bath water volume every thirty minutes or less. Hot springs public baths shall be exempt from the requirements for recirculation, filtration and disinfection provided they comply with the water quality requirements in Subsection N and O of 7.18.4.11 NMAC.

[7.18.3.30 NMAC - Rp, 7.18.3.30 NMAC 07/30/08]

#### 7.18.3.31 ELEVATED LIFEGUARD CHAIRS:

A. Each public pool where lifeguards are required shall have at least one elevated lifeguard chair.

B. There shall be one lifeguard chair for each lifeguard required with the exception of the lifeguard located at waterslide exits and wading pools.

C. Where more than one lifeguard chair or elevated lifeguard platform is required, there shall be a chair or platform located on each side of the pool. When there is a diving tank connected to a pool (ZLT) where the pool has more than two thousand five hundred square feet, department approval is required.

D. Lifeguard chairs shall be located to provide a clear, unobstructed view of the bottom of the pool within a field of view no greater than ninety degrees on either side of a line of sight extending straight out from the platform or lifeguard chair.

**E.** Portable lifeguard chairs or elevated lifeguard platforms shall be acceptable providing they are structurally sound and tilt or tip proof.

**F.** Lifeguard chairs to at least six feet in height from the deck surface to the chair seat shall be located in the diving area and where the water depth is five feet or greater. Height is specified due to refraction angle of the water.

**G.** A pool that has a diving board shall have at least one elevated lifeguard chair located to provide a clear unobstructed view of the pool bottom in the diving area. The seat of the lifeguard chair in the diving area shall be located at an elevation of at least six feet above the pool deck.

**H.** Elevated lifeguard platforms located in the shallow area where the water is less than five feet in depth shall be at least thirty-four inches in height from the deck surface to the platform surface. The department may approve other configurations if visibility problems occur.

[7.18.3.31 NMAC - Rp, 7.18.3.31 NMAC, 07/30/08]

**7.18.3.32 E M E R G E N C Y TELEPHONE:** An emergency telephone shall be located in any of the following areas:

**A.** within the public pool enclosure that is accessible at all times;

**B.** in another location approved, in writing, by the department.

[7.18.3.32 NMAC - Rp, 7.18.3.32 NMAC, 07/30/08]

**7.18.3.33 PUBLIC POOL BARRIER:**

**A.** For all newly constructed and modified public pools and baths, and where the barrier is being replaced, the provisions of Subsections B through K of this section shall apply. For public pools constructed prior to effective date of the pool rules' and where the barrier has not been replaced, the provisions of Subsection L of this section shall apply.

**B.** Public pools and baths shall be completely enclosed by a barrier that is durable, stable, and of firm construction to control access to the public pool and not provide a framework for climbing or scaling.

**C.** Unless otherwise prohibited by the fire code or the local fire marshal, barriers, including windows, gates, and doors, shall be constructed in such a manner so as to control access to the pool. Barriers that serve as emergency exits shall have an audible alarm.

**D.** The top of the barrier shall be not less than five feet above grade as measured from the exterior side of the enclosure or barrier at a point three feet per-

pendicular from the base at any given point along the enclosure. A clear span five feet in radius as measured from the top of the fence is required, as specified in Subsection C of 7.18.3.34 NMAC, Barrier clearance requirements.

**E.** The bottom horizontal rail or bar of the enclosure or barrier shall be no more than four inches above the grade when the grade is a solid surface, such as a concrete deck or two inches when the grade is any other surface, as specified in Subsection A of 7.18.3.34 NMAC, Barrier detail.

**F.** The separation between vertical sections and bars shall be no wider than four inches.

**G.** There shall be forty five inch minimum separation between the bottom horizontal members or rails and any other horizontal member or rail of the mid section of the pool enclosure.

**H.** A barrier shall not have decorative portions that provide handholds or footholds. All exterior projections or recessions shall be forty-five inches from the bottom of the fence, as specified in Subsection A, Barrier detail, of 7.18.3.34 NMAC.

**I.** Chain link enclosures or barrier's mesh size shall not exceed one and one fourth inches square, unless slats, fastened at the top and bottom of the fence, or other department approved measures, are used to reduce mesh openings to not allow the passage of a one and three-quarters inch-diameter sphere. Chain link fencing shall not be less than eleven gage, as specified in Subsection B of 7.18.3.34 NMAC.

**J.** Gates and doors in public pool enclosures or barriers shall open outward away from the pool, be self-closing and equipped with a self-latching device lockable from the exterior side of the enclosure or barrier. Except as provided in 7.18.4.21 NMAC, barrier gates and doors shall not be blocked open or otherwise disabled to prevent closing and latching.

(1) The operating controls for the self-latching device shall be located at least forty-two inches above the exterior ground surface or pool deck. Latches that remain continuously locked and can only be opened by the use of a key or other access control system shall be of a height that allows the barrier, fence and latch to be in compliance with accessibility standards, and applicable regulations.

(2) An eighteen inch radius of solid material around the self-latching device or a similar barrier with openings no greater than one-half inch shall be provided.

(3) Where a kick plate is required to meet accessibility standards, such gate or door shall have a solid facing at least forty-two inches from the bottom of the gate.

**K.** Gates, doors or fire exits shall not open directly into a public pool enclosure from a living unit, hotel, motel room, or other public building unless otherwise required by the fire code or the local fire marshal. For spas or baths that are associated with a specific guest or motel room, the owners of the facility shall ensure compliance with the barrier requirements.

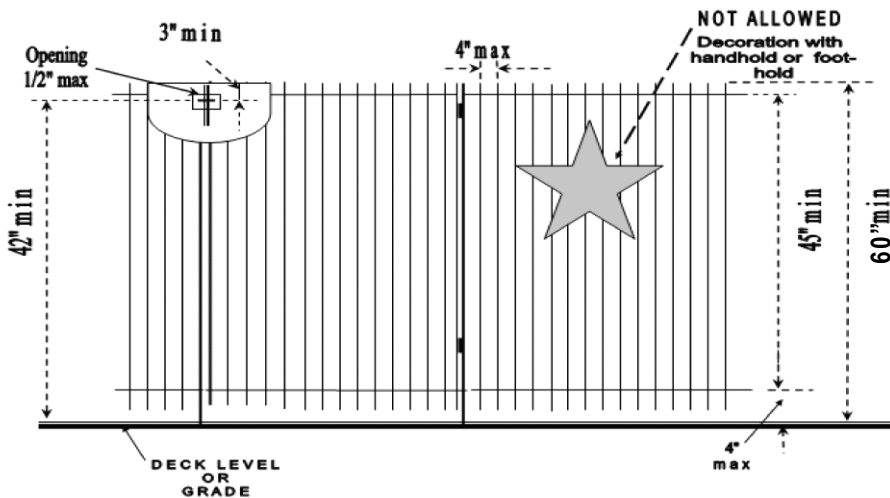
**L.** Public pools and baths that existed prior to the effective date of the pool rules and that have not been modified shall have a barrier with a minimum height of four feet. Barriers not meeting this requirement shall be replaced in accordance with the provisions of Subsections B through K of this section.

[7.18.3.33 NMAC - Rp, 7.18.3.33 NMAC, 07/30/08]

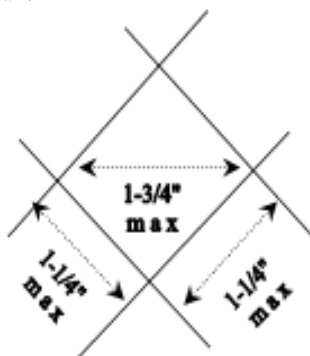
[Continued on page 456]

7.18.3.34 POOL BARRIER DIMENSIONS AND REQUIREMENTS:

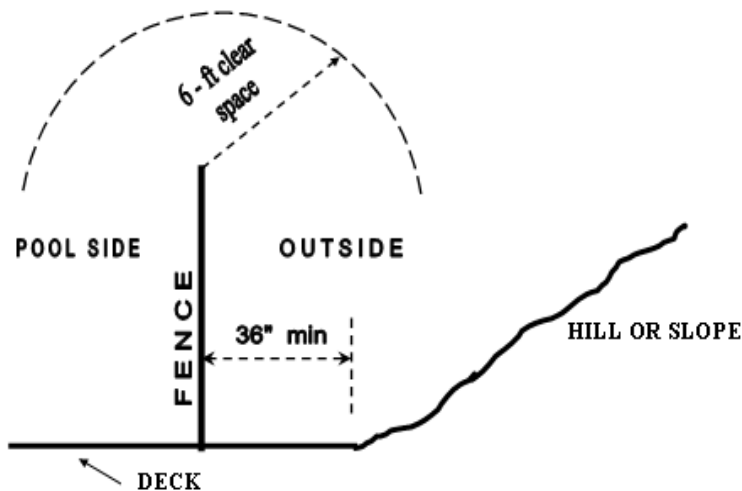
A. Barrier detail:



B. Chain link fence detail:



C. Barrier clearance requirements:



[7.18.3.34 NMAC - Rp, 7.18.3.34 NMAC, 07/30/08]

7.18.3.35 DECKS:

- A. All public pools and hot springs public baths constructed or modified after the effective date of the pool rules shall have a continuous, unobstructed deck that is at one level, excluding the slope for drainage, and of at least four feet width surrounding the pool. The deck width may include the coping.
- B. Exception: on spas with a diameter, length or width of less than twelve feet, a continuous deck, that is no less than four feet wide, shall be provided around at least fifty percent of a spa. Egress may only be permitted on to the deck.
- C. Decks around rockeries and waterfalls shall conform to specifications stated in 7.18.3.16 NMAC of this rule.
- D. All public pools constructed after the effective date of these rules shall have a deck that is no less than four feet wide

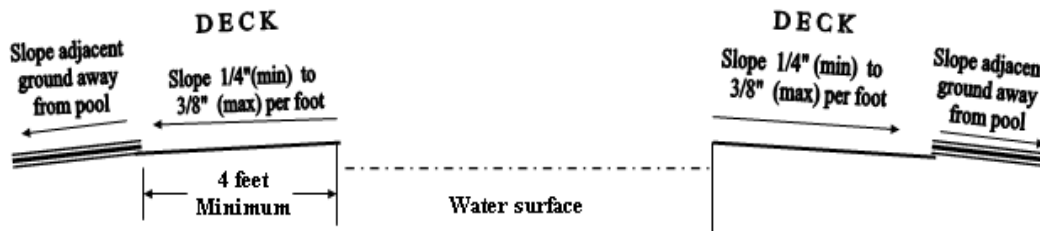
behind diving equipment, slides, lifeguard chairs or starting platforms.

- E. Decks shall slope from one-fourth inch per foot to a maximum of three-eighths inch per foot and shall be drained to the perimeter area or area drains.
- F. Outdoor pools decks may drain to landscaping in a manner that will not create muddy, hazardous or unsanitary conditions.
- G. Indoor pools shall use properly plumbed deck drains that drain to an approved receptor by means of an indirect connection.
- H. Drainage shall remove pool and spa splash water, deck cleaning water and rainwater without leaving standing water.
- I. The surface of the deck shall not drain into the pool or the overflow gutter and shall not be returned to the recirculation system.
- J. Site drainage shall be provided to direct all perimeter deck drainage, as well as general site and roof drainage, away from the pool. When required, yard drains shall be installed to prevent the accumulation of water around the pool area.
- K. Except for trench type drainage systems, deck drains shall be spaced or arranged so that not more than two hundred square feet of area is tributary to each drain and drains shall not be more than twenty-five feet apart.
- L. Runway drains shall not be interconnected with overflow system drain lines.
- M. Deck surfaces shall be constructed of concrete, non-slip tile, or other impervious material with a slip-resistant, easily cleanable surface.
- N. For all public pools and hot springs public baths constructed or modified after the effective date of these rules wooden surfaces, carpeting or artificial turf surfaces are prohibited on the deck or within the limits of the deck drainage area, whichever is greater. No person shall modify a deck at a public pool or hot springs public bath, which was constructed prior to the effective date of these rules, and install wooden, carpeting or artificial turf surfaces on the deck, or within the limits of the deck drainage area, whichever is greater.
- O. Joints between concrete deck slabs shall be effectively sealed and shall be designed to protect the pool, coping and its mortar bed from movement of the deck.
- P. New or replacement expansion joints installed after the effective date of the pool rules' shall not be constructed of wood.
- Q. Adjoining deck surface elevations shall vary no more than one-fourth inch.

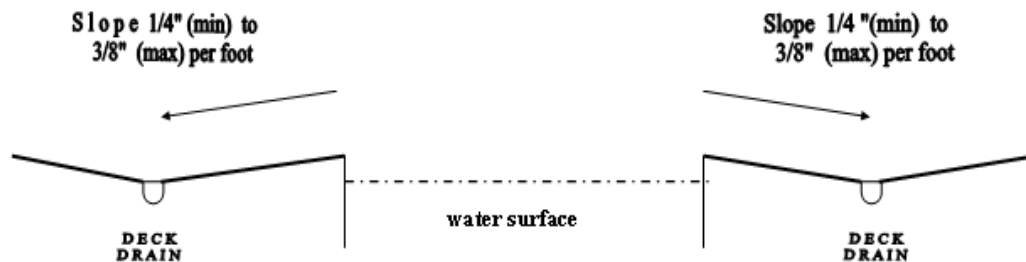
[7.18.3.35 NMAC - Rp, 7.18.3.35 NMAC, 07/30/08]

**7.18.3.36 DECK AND DECK DRAIN REQUIREMENTS:**

- A. Deck without deck drains:



- B. Decks with drains:



[7.18.3.36 NMAC - Rp, 7.18.3.36 NMAC, 07/30/08]

**7.18.3.37 CIRCULATION SYSTEM:**

- A. Except for hot springs public baths and fill and draw public baths, all public pools, shall have circulation and filtration systems with piping, pumps, filters, disinfection and other equipment to maintain uniform disinfection levels and pool water quality in all parts of the pool as required by this regulation and other applicable provisions of the pool rules. The circulation system for public baths shall meet the applicable requirements of 7.18.3.30 NMAC of this rule.

B. The system of pumps, filters, disinfection facilities and other equipment shall be of adequate size to meet the following maximum turnover rate:

- (1) wave pools/watercourse ride - six hours;
- (2) wading pools - one hour;
- (3) waterpark slide pools - one hour;
- (4) all other special use pools - thirty minutes;
- (5) spas, thirty minutes;

(6) class D pools - four hours; and  
 (7) all other public pools - six hours.

**C.** Any circulation system installed in accordance with pool rules in effect at the time of original construction or modification and which does not meet the turnover rates in Subsection B of 7.18.3.37 NMAC, may continue in use, until the pool is modified. However, the continued use of the existing recirculation system is contingent upon the recirculation system complying with all standards of disinfection and water clarity in the swimming pool rules. Non-compliant recirculation systems shall be replaced or brought into compliance.

**D.** The circulation system at all public pools, except for fill-and-draw baths, shall have flow rate meter(s) or device(s), installed, operated, and maintained in accordance with manufacturers' directions to measure all necessary flow rates as indicated by this regulation and other applicable provisions of the pool rules.

**E.** Each public pool shall have its own circulation system that is not connected to any other pool.

[7.18.3.37 NMAC - Rp, 7.18.3.37 NMAC, 07/30/08]

#### **7.18.3.38 SURFACE SKIMMING AND PERIMETER OVERFLOW GUTTER SYSTEMS:**

**A.** Surface skimmers or perimeter overflow gutter systems shall be provided at all public pools. Such systems shall be designed and constructed to skim the surface of the pool or spa water when the water level is maintained within the operating water level range of the system's rim or weir device.

**B.** Where skimmers are provided the following provisions will apply.

(1) All skimmers installed in a public pool shall be NSF/ANSI 50 certified.

(2) Each skimmer shall be equipped with a strainer basket and a self-adjusting skimmer weir device that shall operate freely with continuous action to variations in water level over a range of at least three inches.

(3) Skimmers shall be designed for a flow-through rate of not less than thirty gallons per minute and the total capacity of all skimmers in any pool shall be at least eighty percent of the required filter flow of the recirculation system.

(4) Each skimmer shall be equipped with a self-activating equalizer line, a flow control device, and an anti-entrapment plate. This subsection shall only apply to public pools constructed or modified after the effective date of the pool rules.

(5) Skimmers shall be located to achieve effective skimming action over the

entire surface area of the pool.

(6) Skimmer covers located on a walking surface shall be securely seated, slip-resistant, of sufficient strength to withstand normal deck use, and not constitute a tripping or safety hazard.

(7) Where skimmers are used, there shall be one skimmer for each five hundred square feet of surface area, with a minimum of two skimmers. One skimmer shall be provided for each one hundred fifty square feet of spa or wading pool water surface area, or fraction thereof.

(8) The operating water level for surface skimmers shall be within the vertical operating range of the skimmers.

**C.** Where perimeter overflow gutter systems are used the following provisions will apply.

(1) Perimeter overflow gutter systems shall be provided around the entire perimeter of public pools.

(2) Perimeter overflow gutter system drains shall not exceed fifteen feet on centers. The perimeter overflow gutter bottom shall be sloped one-fourth inch per foot to the drainage outlets.

(3) The perimeter overflow gutter system outlets shall be covered with department-approved drain grates.

(4) The perimeter overflow gutter system shall be capable of continuously removing fifty percent or more of the recirculated water and returning it to the filter.

(5) Water from the perimeter overflow gutter systems shall recirculate through the filter or, in cases of pools installed prior to the effective date of this regulation, water may be discharged into the sewer. If water is discharged to a sewer, there shall be a minimum eight-inch air gap or a department-approved back-siphonage and backflow prevention device between the perimeter gutter overflow system drain line and the top rim of the approved receptacle. Enclosed pipeless gutters shall have clean-out covers at a maximum of fifteen-foot intervals and shall have a slope of not less than one-eighth inch per foot.

(6) Public pools with perimeter overflow gutter systems shall have surge tanks unless designed to use inpool surge.

(7) Perimeter overflow gutter systems shall be connected to the recirculation system with a system surge capacity of at least one gallon per square foot of pool surface.

(a) External surge systems shall be capable of transferring water at a rate equal to one hundred percent of the pool's design flow rate.

(b) Perimeter overflow gutter systems shall drain in two minutes or less after sudden flooding.

(8) The operating water level for perimeter overflow gutter systems shall be over the overflow gutter lip at all times.

[7.18.3.38 NMAC - Rp, 7.18.3.38 NMAC, 07/30/08]

#### **7.18.3.39 INLETS AND OUTLETS:**

**A.** Pool inlets and outlets shall be sized and arranged to produce a uniform circulation of water to maintain a uniform level of disinfectant residual throughout the pool.

**B.** Inlets shall not protrude from the public pool floor or wall to create a hazard.

**C.** Grates shall be designed to prevent entrapment of fingers and other body parts.

**D.** All outlet grates, anti-entrapment plates, and inlet fittings shall have tamper-proof screws that cannot be removed except with tools.

**E.** There shall be at least one inlet per five hundred square feet of pool surface area or per fifteen thousand gallons of water, whichever results in the greater number of inlets.

**F.** All inlets shall be adjustable to obtain the desired rate and direction of water flow. If the distance across any portion of the public pool is more than thirty feet, multiple inlets shall be provided on opposite ends.

**G.** Inlets from the recirculation system shall be submerged at least twelve inches below water level.

**H.** If the pool width is greater than twenty-five feet, multiple outlets shall be provided. Multiple outlets shall be spaced not more than twenty feet apart or more than ten feet from side walls, and shall be located to provide uniform withdrawal of water from the deepest part of the pool.

**I.** The total velocity through outlet grate openings shall not exceed one and one-half feet per second. The total velocity through anti-entrapment suction outlet covers shall not exceed six feet per second.

**J.** Vacuum outlets on public pools shall be self-closing.

**K.** Pool outlets shall be valved and connected to the recirculation pump.

**L.** Pool outlets shall have a design capacity equal to one hundred percent of the recirculation pump capacity.

**M.** All pools shall have, at the lowest point of the pool floor to drain the entire floor area, either a minimum of two hydraulically balanced suction outlet openings at least three feet apart with anti-entrapment covers or grates with a minimum surface area of one hundred forty-four square inches per pool pump suction line.

**N.** The system shall be designed such that the outlets are at least three feet apart and so that neither one of the two outlets can be cut out of the suction line

by a valve or other means which would allow entrapment of the bather on any suction outlet opening.

**O.** All suction outlets, including covers, plates, fittings, hardware, shall be designed to prevent entrapment in accordance with Section 11, ANSI/NSPI-1 2003.

[7.18.3.39 NMAC - Rp, 7.18.3.39 NMAC, 07/30/08]

**7.18.3.40 POOL FILL SPOUTS AND INLETS:** For pool fill spouts and inlets the following shall apply.

**A.** Over-the-rim fill spouts.

(1) Over-the rim fill spouts shall have an air gap or other equivalent means approved by the department or local municipal plumbing authority, above the pool deck, a minimum of six inches or two times the diameter of the pipe, whichever is greater.

(2) Over-the-rim fill spouts shall be located under a diving board, hand rail or beside grab rails.

**B.** Through-the-wall fill lines shall be located above the water level and equipped with a department-approved back-siphonage and backflow prevention device installed on the potable water supply for cross-connection prevention and control.

**C.** If directly connected to the pool's circulation system, a department-approved back-siphonage and backflow prevention device, for the purpose of cross-connection prevention and control, shall be installed on the potable water supply before it connects to the pool recirculation piping. [7.18.3.40 NMAC - Rp, 7.18.3.40 NMAC, 07/30/08]

**7.18.3.41 PIPING:**

**A.** Pool circulation piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the operating head of the pump.

**B.** All public pools constructed after the effective date of the pool rules' and where the piping is being replaced, plastic piping, if installed, shall be non-toxic and certified by NSF/ANSI 14.

**C.** Public pool or spa backwash or drain lines shall be permanently piped with an air gap, equivalent to two times the pipe diameter, but in no case less than eight inches above the flood level of the approved receptor.

(1) All of the plumbing drains serving the pool sewer system shall discharge into the sanitary sewer system or other department approved disposal method.

(2) Unless otherwise waived in writing by the county or municipal plumb-

ing authority, or the operator of the sewer system, all discharges to the sanitary sewer from any public pool or ancillary facility shall be equipped with a two-chamber sand interceptor meeting the requirements set forth in the current appropriate code adopted by the department, the New Mexico construction industries division, the county or municipal plumbing authority, or the operator of the sewer system.

**D.** Exposed piping shall be properly and permanently labeled to easily and adequately identify the piping function and direction of flow to the operator.

**E.** Pool piping subject to damage by freezing shall have a uniform slope in one direction and shall be equipped with valves for adequate drainage or shall be capable of evacuating water to prevent freezing and possible damage.

**F.** Piping and equipment shall be designed, fabricated, and installed to drain the pool water from the equipment, together with exposed face piping, by removal of drain plugs and manipulating valves, or by other methods.

[7.18.3.41 NMAC - Rp, 7.18.3.41 NMAC, 07/30/08]

**7.18.3.42 PUMPS:**

**A.** A pump and motor shall be provided for circulation of public pool water, except for fill and draw public baths and flow through public baths that meet the requirements of Paragraph (2) of Subsection B of 7.18.3.30 NMAC of this rule.

**B.** All pumps shall have a strainer on the suction side of the pump.

(1) Strainers installed below water level shall have a valve on each side to facilitate cleaning.

(2) The strainer inlet shall be at least equal in size to the pump suction line.

**C.** Performance of pumps shall meet the conditions of flow required for filtering and backwashing the filters against the TDH developed by the complete system. Pumps shall be capable of providing design flow rates to match the TDH.

**D.** Public pool pumps shall be NSF/ANSI 50 certified.

**E.** Pumps shall be sized to meet flow requirements, under soiled (dirty) filter conditions as specified in 7.18.3.37 NMAC, of this rule, for filtering the public pool water in accordance with 7.18.3.37 NMAC and filter cleaning (if applicable) against the total dynamic head developed by the complete system. Pumps shall also be sized to create pressures or vacuums necessary to meet the manufacturer's recommendations for filter cleaning.

[7.18.3.42 NMAC - Rp, 7.18.3.42 NMAC, 07/30/08]

**7.18.3.43 FILTERS:**

**A.** Filters shall be sized to accommodate or exceed the design flow rate of the system and be capable of maintaining pool water clarity under conditions of maximum bather load as described in Paragraph (9) of Subsection A of 7.18.4.11 NMAC, Pool Water Quality.

**B.** Filters for public pools shall be backwashed, cleaned, operated, installed, operated, maintained, and replaced per the schedules, instructions and frequency provided by the manufacturer.

**C.** The filtration rate shall not exceed the following:

(1) high rate sand filters - twenty gallons per minute per square foot of filter media or that rate approved by the manufacturer for that particular filter, whichever is less;

(2) rapid sand filters - three gallons per minute per square foot of filter media;

(3) diatomaceous earth filters - two gallons per minute per square foot of filter media for pools, one and one half gallons per minute per square foot of filter media for spas; or

(4) cartridge filters - .375 gallons per minute per square foot of effective filter area.

**D.** Adequate means to release air from the filter tank shall be provided.

**E.** Filter components, which require servicing, shall be accessible and available for inspection and repair.

**F.** Filters shall be designed so that filtration surfaces can be easily inspected and serviced.

**G.** Filters shall be NSF/ANSI 50 certified.

[7.18.3.43 NMAC - Rp, 7.18.3.43 NMAC, 07/30/08]

**7.18.3.44 POOL HEATERS:** All public pool heaters and energy sources shall be designed, constructed and operated to comply with applicable local, state or federal codes and standards as well as the manufacturer's specifications.

[7.18.3.44 NMAC - Rp, 7.18.3.44 NMAC, 07/30/08]

**7.18.3.45 DISINFECTANT AND CHEMICAL FEEDERS:**

**A.** Automatic disinfection of public pools shall be provided and shall maintain a disinfecting residual in the pool waters at all times, except for fill and draw public baths and flow through public baths that meet the requirements of Paragraph (2) of Subsection B of 7.18.3.30 NMAC of this rule. The requirements of 7.18.3.45 NMAC shall not apply to hot springs public baths.

**B.** Hand dosing of disin-



fectant or the introduction of disinfectant into the public pool through the skimmers or the main drain is prohibited.

**C.** The disinfection agent for public pools shall be registered for such use by the U.S. environmental protection agency and shall be capable of being tested by a test kit.

**D.** Automatic disinfection equipment shall have controls capable of fine feed rate adjustment, and a graduated and clearly marked dosage adjustment.

**E.** For public pools, disinfection equipment shall:

(1) be capable of feeding at least one pound equivalent chlorine per fifteen thousand gallons of pool capacity per twenty-four hours; or,

(2) be capable of feeding at least two and one fourth pounds of bromine per fifteen thousand gallons of pool capacity per twenty-four hours where bromine sanitation is applicable.

**F.** Hypochlorinators, erosion (flow-through) feeders, or other adjustable output rate disinfectant feeding equipment shall be NSF/ANSI 50 certified.

**G.** All public spa pools and wading pools shall be equipped with oxidation-reduction potential (ORP) automatic disinfection and pH controllers.

**H.** Where chlorine gas is used as the disinfectant, the following shall apply.

(1) The chemical feeders, other containers, and related equipment shall be housed in a room or compartment separate from other pool equipment; such room or compartment shall:

(a) be at or above ground level;

(b) have a door that opens to the outside of the building in the room or compartment where the chlorine gas is stored; the door shall open away from the public access area;

(c) be located so that chlorine gas, if accidentally released, will not flow into the pool area or into building ventilation systems;

(d) have lighting and ventilation switches located outside the enclosure, adjacent to the door, or the door shall be equipped with a switch that automatically activates the mechanical ventilation and lighting systems;

(e) have adequate ventilation to outside fresh air with at least four (4) complete air changes per minute; and

(f) have a platform scale for measuring the weight of the chlorine cylinders.

(2) The certified operator shall use a full face negative pressure respirator with a chlorine cartridge approved by the national institute of occupational safety and health (NIOSH) for protection against chlorine gas; or a self-contained breathing appa-

ratus approved by the NIOSH shall be supplied, kept in good working condition and mounted outside the chlorine enclosure.

(3) Gas chlorinators shall have a fail-safe mechanism that ceases chlorination in case of malfunction.

(4) Gas chlorinators shall be equipped with an anti-siphon chlorine injection device.

(5) The vent line from the gas chlorinator shall vent away from occupied areas; the exterior vent line shall be screened.

(6) Pools shall have appropriate equipment for maintaining required pH levels.

**I.** Where disinfectants other than chlorine or bromine are used, such disinfectants shall:

(1) achieve water disinfection equal to that provided by free chlorine or bromine at the concentration specified in 7.18.4.10 NMAC; the burden for demonstrating that the proposed alternative is equal to or better than chlorine or bromine is upon the proponent of the alternative disinfectant method; and

(2) be approved in writing by the department; the approval may place special requirements and conditions on its use;

(3) ozone and ultraviolet disinfection may be used as an alternative or a supplemental disinfection system as approved under this subsection by the department.

[7.18.3.45 NMAC - Rp, 7.18.3.45 NMAC, 07/30/08]

#### **7.18.3.46 AIR INDUCTION SYSTEMS:**

**A.** Air induction systems shall only be allowed in spa pools.

**B.** Air induction systems shall be designed to prevent electrical shock hazards.

**C.** Air intake sources shall be positioned and designed to minimize contaminants, such as deck water or dirt, from entering the spa pool.

**D.** Air induction systems shall have a timer-controlled operation and shall be limited to a maximum of fifteen minutes. Air induction system controls shall be located a minimum of six feet horizontally from the edge of the spa pool.

**E.** Air induction systems shall be completely separate from the spa pool circulation system.

[7.18.3.46 NMAC - Rp, 7.18.3.46 NMAC, 07/30/08]

#### **7.18.3.47 METERS AND GAUGES:**

**A.** Flow rate meters or gauges shall be installed, operated, and maintained in good working condition in all circulation systems and flow-through public baths. Such meters shall:

(1) measure the flow in gallons per minute;

(2) be mounted as recommended by the manufacturer;

(3) be located to be easily read; and

(4) calibrated per the procedures and at the frequency specified by the manufacturer.

**B.** Pressure gauges or vacuum gauges shall be installed on all public pools so that pressure or vacuum readings, appropriate to filter type, may be obtained on both the filter inlet and outlet lines.

[7.18.3.47 NMAC - Rp, 7.18.3.47 NMAC, 07/30/08]

#### **7.18.3.48 EQUIPMENT ENCLOSURE:**

**A.** New pool construction, beginning with the effective date of this regulation, shall have an equipment enclosure with a minimum of fifty square feet of floor area and a minimum of three feet of unobstructed access to operational, informational and maintenance portions of the equipment.

**B.** Equipment enclosures shall be adequately ventilated.

**C.** Equipment enclosures shall protect the equipment and be locked, permitting access only to authorized personnel.

**D.** Equipment enclosures shall have adequate drainage.

**E.** Equipment enclosures shall be lighted to properly operate and maintain equipment.

**F.** All electrical lights, fixtures, outlets, and other equipment shall be in compliance with applicable electrical codes.

[7.18.3.48 NMAC - Rp, 7.18.3.48 NMAC, 07/30/08]

#### **7.18.3.49 BATHHOUSE AND TOILET FACILITIES:**

**A.** A bathhouse shall be provided at all class A public pools, and maintained in good working order and sanitary condition at all times.

**B.** For the purposes of calculating the required number of toilet facilities, showers, and lavatories to meet the requirements in this section the bather load shall be composed of fifty percent of each sex unless otherwise approved by the department.

**C.** Where a class A public pool is operated in conjunction with a companion facility, such as a recreation facility, a bathhouse common to both facilities is allowed, provided the minimum facility ratios and locations described in Subsections D, E, and F of this section are followed.

**D.** Bathhouses shall:

(1) be located within a maximum travel distance of two hundred feet of the class A public pool or the maximum travel distance specified in the international building code, whichever is more stringent;

(2) have floors that are slip resistant, easily cleanable, and coved to a height of four inches;

(3) have interior wall and ceiling finishes that are smooth, easily cleanable, and impervious to water;

(4) have hose bibs for washing down the bathroom interior;

(5) have floors with a minimum slope of one-fourth inch per foot that drain to floor drains;

(6) have ventilation to minimize condensation and odors with a minimum of two air changes per hour; and

(7) have shower rooms or stalls with walls that are impervious to water to a height of six feet above the floor; shower rooms and stalls shall comply with the following requirements:

(a) shower rooms and stalls shall have an effective water tight joint between the wall and the floor;

(b) shower stalls shall have doors or curtains for each compartment;

(c) glass bath or shower doors shall be made of safety glass;

(d) wooden racks or duck boards over shower floors are prohibited;

(e) rubber or waterproof mats shall be cleaned and dried daily; and

(f) shower stall floors shall be finished with non-slip, impervious surfaces.

**E.** Class A public pools shall provide toilet facilities in the following numbers based upon maximum pool bather load:

(1) women, one per forty bathers or fraction thereof, with a minimum of two;

(2) men, one per seventy five bathers or fraction thereof, with a minimum of two (urinals shall be an acceptable substitute for no more than one-half of the toilets); and

(3) lavatories adjacent to toilets, one per two hundred bathers or fraction thereof, with a minimum of two.

**F.** Class A public pools shall provide one showerhead per forty pool users or fraction thereof, with a minimum of two.

**G.** Hot and cold or tempered water only shall be provided at all showerheads.

**H.** Soap shall be provided at all showerheads and lavatories.

**I.** If the bathroom at any public pool is modified or newly constructed, it shall come into compliance with the current requirements of the pool rules.

**J.** Beginning with the effective date of this regulation, all new

construction of class B pools or modified class B pools shall:

(1) provide toilets and lavatories based upon maximum bather load:

(a) women, one per forty pool users or fraction thereof, with a minimum of one;

(b) men, one per seventy five pool users or fraction thereof, with a minimum of one (urinals shall be an acceptable substitute for no more than one-half of the toilets); and

(2) provide such toilets and lavatories within five hundred feet of the public pool.

**K.** When all private accommodations or living units are located within a travel distance of five hundred feet of a class B public pool, it shall constitute compliance with the requirements of Paragraphs (1) and (2) of this subsection.

**L.** When provided, additional bathroom facilities adjacent to the pool shall comply with the requirements of Paragraphs (2) through (7) of Subsection D of 7.18.3.49 NMAC and shall comply with the fixture requirements of Subparagraphs (a) and (b) of Paragraph (1) of Subsection J of 7.18.3.49 NMAC.

[7.18.3.49 NMAC - Rp, 7.18.3.49 NMAC, 07/30/08]

#### **7.18.3.50 VISITOR AND SPECTATOR AREAS:**

Visitors and spectators shall be allowed within the pool room or pool enclosure if they are restricted to a separate area not used by bathers during competition or demonstration events.

[7.18.3.50 NMAC - Rp, 7.18.3.50 NMAC, 07/30/08]

#### **7.18.3.51 FOOD SERVICE:**

**A.** Glass and rigid plastic containers are prohibited within the pool enclosure, except during competitive swimming events and practice sessions for such events, where water bottles without removable lids may be used to provide drinking water to participants.

**B.** Food and drink shall be permitted in the visitor and spectator areas or in separated snack areas for pool users.

**C.** Trash containers shall be provided in the food service areas.

[7.18.3.51 NMAC - Rp, 7.18.3.51 NMAC, 07/30/08]

#### **7.18.3.52 DRINKING FOUNTAINS:**

Drinking fountains shall be provided at all class A public pools.

[7.18.3.52 NMAC - Rp, 7.18.3.52 NMAC, 07/30/08]

#### **7.18.3.53 RIGHT OF ENTRY:**

**A.** Upon presentation of credentials, department representatives may

enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

**B.** When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a permitted or unpermitted public pool is located;

(2) have a right of entry on any premises where any records that are required by the public swimming pool rules or permit conditions are kept;

(3) have access to and copy any record that the public swimming pool rules or permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit condition; and

(5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit condition.

[7.18.3.53 NMAC - Rp, 7.18.3.53 NMAC, 07/30/08]

#### **7.18.3.54 to 7.18.3.200**

**[RESERVED]**

#### **7.18.3.201 CONSTRUCTION:**

This part shall be liberally construed to carry out its purpose.

[7.18.3.201 NMAC - Rp, 7.18.3.201 NMAC, 07/30/08]

#### **7.18.3.202 SEVERABILITY:**

If any provision of application of this part is held invalid, the remainder of this part, or any other application, shall not be affected.

[7.18.3.202 NMAC - Rp, 7.18.3.202 NMAC, 07/30/08]

#### **7.18.3.203 REFERENCES IN OTHER REGULATIONS:**

Any reference to the public swimming pool regulations or to any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.3.203 NMAC - Rp, 7.18.3.203 NMAC, 07/30/08]

#### **7.18.3.204 SAVINGS CLAUSE:**

Repeal or supersession of prior versions of this part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.3.204 NMAC - Rp, 7.18.3.204 NMAC, 07/30/08]

#### **7.18.3.205 COMPLIANCE**

**WITH OTHER REGULATIONS:**

Compliance with the public swimming pool rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state or local regulations.

[7.18.3.205 NMAC - Rp, 7.18.3.205 NMAC, 07/30/08]

**7.18.3.206 PENALTY:** Any person who violates any provisions of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.3.206 NMAC - Rp, 7.18.3.206 NMAC, 07/30/08]

**7.18.3.207 LIMITATION OF**

**DEFENSE:** The existence of a valid permit for the installation, modification or operation of a public pool shall not constitute a defense to a violation of any section of this rule, except the requirement for obtaining a permit.

[7.18.3.207 NMAC - Rp, 7.18.3.207, 07/30/08]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

### TITLE 7 HEALTH CHAPTER 18 SWIMMING POOLS PART 4 PUBLIC SWIMMING POOLS, SPAS AND BATHS: MAINTENANCE AND OPERATION REQUIREMENTS

**7.18.4.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.

[7.18.4.1 NMAC - Rp, 7.18.4.1 NMAC, 07/30/08]

**7.18.4.2 SCOPE:** Owners and operators of public swimming pools, public spas, public baths or other public bathing attractions.

[7.18.4.2 NMAC - Rp, 7.18.4.2 NMAC, 07/30/08]

**7.18.4.3 STATUTORY AUTHORITY:** NMSA 1978, Sections 74-1-1 through 74-1-16.

[7.18.4.3 NMAC - Rp, 7.18.4.3 NMAC, 07/30/08]

**7.18.4.4 DURATION:** Permanent.

[7.18.4.4 NMAC - Rp, 7.18.4.4 NMAC, 07/30/08]

**7.18.4.5 EFFECTIVE DATE:** 07/30/08, unless a later date is cited at the

end of a section.

[7.18.4.5 NMAC - Rp, 7.18.4.5 NMAC, 07/30/08]

**7.18.4.6 OBJECTIVE:** To protect the public health and safety by establishing standards and provisions for the regulation of public swimming pools, spas, baths, and other public bathing attractions.

[7.18.4.6 NMAC - Rp, 7.18.4.6 NMAC, 07/30/08]

**7.18.4.7 DEFINITIONS:**

Unless otherwise defined in this rule, the words and phrases used in this rule have the same meanings as in 7.18.2.7 NMAC, Public Swimming Pools, Spas and Baths: General Provisions, Definitions.

[7.18.4.7 NMAC - Rp, 7.18.4.7 NMAC, 07/30/08]

**7.18.4.8 ADOPTION BY REF-**

**ERENCE:** Outside standards, listings, and publications referenced in this rule are part of this rule.

[7.18.4.8 NMAC - Rp, 7.18.4.8 NMAC, 07/30/08]

**7.18.4.9 ENFORCEMENT AUTHORITY:**

**A.** Private pools shall not be subject to the provisions of this rule or to 7.18.2 through 7.18.5 NMAC.

**B.** Department representatives shall be responsible for the enforcement of this rule.

[7.18.4.9 NMAC - Rp, 7.18.4.9 NMAC, 07/30/08]

**7.18.4.10 POOL WATER SUPPLY:**

**A.** Owners and operators of public pools shall insure that only approved water supplies are used to fill, add to, or flow through a public pool. The water supply facility shall be properly located, protected, and operated at all times.

**B.** Owners and operators of public pools shall obtain departmental approval of the water supply used to fill, add to, or flow through a public pool.

**C.** Water shall be adequate, and of safe and sanitary quality.

**D.** There shall be no cross connection between a sewer or liquid waste disposal system and a public pool or bathhouse.

[7.18.4.10 NMAC - Rp, 7.18.4.10 NMAC, 07/30/08]

**7.18.4.11 POOL WATER QUALITY:**

**A.** Water in all public pools shall be maintained in accordance with the water quality and physical parameters that are set forth in Subsections A through M of 7.18.4.11 NMAC. Hot springs

public baths shall comply with the water quality and physical parameters in Subsections G, N and O of 7.18.4.11 NMAC.

**(1)** The free available chlorine in pools, except spas and spray pads, shall be maintained between 1.0-ppm free available chlorine and 5.0 ppm free available chlorine.

**(2)** The free available chlorine in spas and spray pads shall be maintained between 2.0 ppm free available chlorine and 5.0 ppm free available chlorine.

**(3)** The combined chlorine in all pools shall not exceed 0.5 ppm.

**(4)** The total available bromine in pools, except spas and spray pads, shall be maintained between 2.0 ppm total available bromine and 6.0 ppm total bromine.

**(5)** The total available bromine in spas shall be maintained between of 2.0 ppm total available Bromine and 6.0 ppm total available bromine.

**(6)** The total available bromine in spray pads shall be between 4.0 ppm total available bromine and 6.0 ppm total available bromine.

**(7)** The pH of all public pools shall be maintained between 7.2 and 7.8.

**(8)** The cyanuric acid in all outdoor public pools shall not exceed 100 ppm. Cyanuric acid shall not be used in indoor public pools.

**(9)** Water clarity in all public pools shall be maintained so that the deepest part of the public pool and the main drain of the public pool are clearly visible at all times from the deck above the deepest part of the pool.

**(10)** Fecal or pathogenic bacteria and algae shall not be present in any public pool.

**(11)** The maximum temperature of a public pool shall not exceed 104 degrees fahrenheit or 40 degrees celsius.

**B.** The department may require the installation of oxidation-reduction potential (ORP) automatic disinfection and pH controls or similar controls on any public pool when there are recurring violations of the water quality parameters for disinfection and pH levels.

**C. Testing equipment:**

**(1)** All public pools shall have fully functional test kit(s) or equipment for measuring the pH, free and combined chlorine concentration, or bromine, (or concentration of other approved disinfectant), and cyanuric acid if stabilized chlorine is used.

**(2)** Test kits shall use EPA approved methods.

**(3)** Test kits for measuring free and total chlorine or bromine shall use *diethyl-P-phenylene diamine* (DPD) as the reagent.

**D.** The frequency of measuring pH, chlorine, bromine, water clarity,

or cyanuric acid shall be done prior to daily opening and as specified in Subsection L of 7.18.4.11 NMAC.

**E.** If pH and sanitizing are automatically monitored and controlled through the use of a properly operating automated system, tests need only be conducted prior to the daily opening of the facility, and at one additional time half way through that daily operation.

**F.** All ORP controllers shall be maintained at a minimum ORP reading of 650 mV. An operating log shall be maintained at each facility, for each pH and ORP controller, as specified in 7.18.4.28 NMAC.

**G.** Notwithstanding other provisions of this part, the department may require any other testing frequencies for water parameters or chemicals to protect public health.

**H.** Public spa pools shall be drained and refilled at least once every 30 days.

**I.** If, at any time, testing indicates that the pool water does not conform to the requirements in Subsection A of 7.18.4.11 NMAC, the pool operator shall immediately close the pool to the public until the requirements are satisfied. After super-chlorinating the public pool, the pool operator shall conduct water testing and record the test results. The pool shall not be re-opened for use by the public until the public pool water conforms to the requirements in Subsection A of 7.18.4.11 NMAC.

**J.** Hand dosing of disinfectant is not allowed except to super-chlorinate or bring the residual up to required levels when the pool is closed.

**K.** The circulation system shall not be turned off except for necessary maintenance or when the pool is taken out of service for an extended period of time.

**L.** If a fecal accident occurs, the operator of a public pool shall follow the procedures and specifications in 7.18.4.27 NMAC of this rule.

**M.** Water quality testing in public pools for disinfectant level and pH shall be performed according to the following schedule.

(1) If pH and disinfectant levels in indoor or outdoor pools are not automatically monitored and controlled through the use of a properly operating automated system, tests shall be performed as follows:

(a) outdoor pools using non-stabilized chlorine shall be tested every hour;

(b) indoor pools using non-stabilized chlorine shall be tested every four hours;

(c) outdoor pools using stabilized chlorine shall be tested every four hours;

(d) all pools using bromine shall be tested every four hours.

(2) For indoor and outdoor pools that are automatically monitored and controlled through properly operating automated systems, tests for pH and disinfectant levels need only be conducted immediately prior to the daily opening of the facility and at one additional time half way through that daily operation.

(3) The level of cyanuric acid in stabilized pools shall be tested weekly.

**N.** Hot springs public baths shall comply with the following water quality and physical parameters.

(1) The pH of the water shall be maintained between 6.6 and 8.0.

(2) Except for department-approved disinfectants, soaps, detergents, chemicals or other additives shall not be added to the water in a hot springs public bath.

(3) The entire volume of water in a hot springs public bath shall be completely drained and refilled at least once every 72 hours. Prior to refilling, the hot springs public bath shall be cleaned and disinfected.

(4) The maximum temperature of water in a hot springs public bath shall not exceed 115 degrees fahrenheit.

(5) Hot springs public baths shall not exceed the following bacteriological quality levels.

(a) a maximum fecal coliform plate count of 200 per 100 ml; or

(b) a maximum enterococci plate count of 33 per 100 ml.

(6) To demonstrate compliance with the bacteriological quality levels in Paragraph 5 of Subsection N of 7.18.4.11 NMAC, water sampling shall be conducted at least once each week and in accordance with a protocol approved in writing by the department. The samples shall be taken one hour prior to the draining of the water in the hot springs public bath.

**O.** If, at any time, sampling or other evidence indicates that the hot springs public bath water does not conform to any or all of the requirements in Subsection N of 7.18.4.11 NMAC, the owner or operator shall immediately close the hot springs public bath to the public until the requirements are satisfied.

[7.18.4.11 NMAC - Rp, 7.18.4.11 NMAC, 07/30/08]

#### 7.18.4.12 LIFEGUARDS:

**A.** Lifeguards shall be present and on duty at their lifeguard stations at all class A pools during operating hours.

(1) There shall be one lifeguard present and on duty for every 40 bathers that are in the enclosure at any given time, with a minimum of two lifeguards. All lifeguards shall use the 10/20 guest protection standard and guest protection zone or another

department-approved guest-protection standard.

(2) Class A spas, public baths, spray pads shall be exempt from the lifeguard requirement but must have an attendant on duty during operating hours.

(3) When swim teams and swimming exercise classes are the only facility users, the owner or designated agent may allow substitution of a swim coach, who is certified by the American red cross or an equivalent organization in first aid and cardiopulmonary resuscitation (CPR) and is trained to deal with safety hazards. Both the owner of the public pool and the sponsoring organization furnishing the swim coach shall be responsible for assuring proper credentials, training and bather controls are maintained in accordance with these requirements.

(4) Class A public pools at clubs and organizational camps where the total area of water surface does not exceed 2,700 square feet and the water depth does not exceed five feet are exempt from the lifeguard requirement provided:

(a) there is no slide, flume, waterslide, or watercourse ride on the pool; and

(b) an attendant is present and on duty during operating hours.

**B.** A lifeguard shall be present and on duty at the lifeguard station during operating hours at all class B public pools constructed or modified after the effective date of the public swimming pool rules if any one of the following applies:

(1) the total area of the water surface exceeds 2,700 square feet;

(2) the water depth exceeds five feet; or

(3) there is a slide, flume, waterslide, or watercourse ride on the pool.

**C.** Class B public pools constructed or modified prior to the effective date of the public swimming pool rules are exempt from the lifeguard requirement provided the total area of water surface does not exceed 2,700 square feet and there is no slide, waterslide, flume, waterslide, or watercourse ride on the pool. Class B public pools constructed or modified prior to the effective date of the public swimming pool rules where the total area of water surface does not exceed 2,700 square feet are exempt from the lifeguard requirement if the maximum number of bathers at any given time is enforceably restricted to one bather per fifty (50) square feet of water surface and provided there is no slide, waterslide, flume, or watercourse ride on the pool.

**D.** In a public pool where a lifeguard is not present, children under the age of 14 shall be supervised by a responsible observer, 18 years or older, who shall be present within the enclosure to stay and

monitor their children at all times. Pool operators, attendants or owners shall verify adult supervision of children in pools where lifeguards are not required.

**E.** Pool operators or owners shall enforce the following rules at all public pools:

(1) bathers shall take a cleansing shower before entering a class A pool;

(2) no person under the influence of an intoxicating liquor or drug shall use the pool;

(3) no food or drink shall be permitted within four feet of the pool; glass containers are not permitted within the pool enclosure;

(4) for class A pools, food and drink shall be permitted only in the visitor and spectator areas;

(5) trash containers shall be provided in the food service areas;

(6) no person shall bring, throw or carry food, drink, smoking material, trash, or debris, into the pool; and

(7) no person shall run or engage in horseplay in or around a public pool.

**F.** All class A and class C public pools must have an attendant present and on duty during operating hours. All attendants shall be:

(1) certified by the American red cross or a department-approved organization in first aid and cardiopulmonary resuscitation (CPR); and

(2) trained to respond to emergency action plans developed by the facility.

**G.** All public pools subject to the lifeguard requirement shall have a guest protection plan. The guest protection plan shall be maintained on file with the department and at the facility at all times the pool is in operation. The guest protection plan shall:

(1) set forth in detail where lifeguards and attendants will be stationed;

(2) describe training and emergency procedures;

(3) include provisions for back-up lifeguards and attendants in the event of a multiple person rescue; and

(4) include any other provisions addressing pool water depth, wave action, line of sight, bather loads or other special conditions affecting the safety of users.

**H.** All incidences of drowning, near-drowning, or deaths due to causes other than drowning, that occur at any public pool shall be reported in writing to the department and per the schedules specified in Subsection B of 7.18.4.13 NMAC.

**I.** Nothing in this rule shall prevent the department from requiring that a lifeguard be present and on duty at any public pool where there are incidences of drowning or near-drowning.

[7.18.4.12 NMAC - Rp, 7.18.4.12 NMAC, 07/30/08]

**7.18.4.13 ACCIDENTS:**

**A.** Operators of public pools shall report in writing to the department any drowning or other death occurring on the pool's premises.

**B.** Such reports shall be submitted within twelve hours of the occurrence and the pool shall immediately suspend operation until allowed to re-open by the department.

[7.18.4.13 NMAC - Rp, 7.18.4.13 NMAC, 07/30/08]

**7.18.4.14 HAZARDS:**

**A.** There shall be no protrusions, extensions, obstructions, tripping hazards, or other means of entanglement in the pool or on the pool deck that could cause bather injury or entrapment. Equipment and devices in the pool and at pool side, such as ladders, drain covers, anti-entrapment covers, handrails, fill lines and diving devices shall be installed so they can only be removed or adjusted with the use of tools.

**B.** All anti-entrapment covers shall be in place and secure during all times the public pool is in use.

**C.** Signs, as specified in 7.18.4.26 NMAC, shall be posted at all times.

[7.18.4.14 NMAC - Rp, 7.18.4.14 NMAC, 07/30/08]

**7.18.4.15 PREVENTION OF DISEASE:**

**A.** All public pool users and employees afflicted with a communicable disease that is capable of being transmitted in a public pool or who are suffering from sores shall be excluded from a public pool.

**B.** A cleansing shower with soap is required of all bathers entering a public pool.

**C.** Footbaths are prohibited.

[7.18.4.15 NMAC - Rp, 7.18.4.15 NMAC, 07/30/08]

**7.18.4.16 ANIMALS:** Animals are not allowed within the pool enclosure or barrier of any public pool, spa or bathhouse except for service animals.

[7.18.4.16 NMAC - Rp, 7.18.4.16 NMAC, 07/30/08]

**7.18.4.17 CLEANLINESS:**

**A.** Public pool buildings, grounds, dressing rooms, walkways and all other facilities shall be kept clean, in a sanitary condition, and maintained free of garbage, trash and other refuse.

**B.** Dirt and scum in pools

shall be removed at least daily or more often as necessary to maintain sanitary conditions.

**C.** All public pools shall be maintained so that the pool is free of accumulated dirt, debris, leaves, or other floating, submerged or settled material.

**D.** All public pools shall be equipped with a vacuum cleaner capable of effectively removing settled material from the bottom of the pool.

**E.** All public pools shall be equipped with a pole mounted skimming net to remove floating or submerged leaves or other debris from the pool.

[7.18.4.17 NMAC - Rp, 7.18.4.17 NMAC, 07/30/08]

**7.18.4.18 OFF SEASON MAINTENANCE:** When a public pool is not in use after seasonal operation or when a public pool is under construction or renovation, water clarity shall be maintained and algae growth prevented.

**A.** Other water quality parameters are not required to be met.

**B.** The facility shall not give off objectionable odors, become a breeding ground for insects or vectors or create any other nuisance or safety hazard.

[7.18.4.18 NMAC - Rp, 7.18.4.18 NMAC, 07/30/08]

**7.18.4.19 BATHER LOAD:**

**A.** The maximum bather load shall not exceed the following:

(1) public pools, except for spa pools and wave pools: one person for each 25 square feet of water surface;

(2) spa pools: one person for each ten square feet of water surface;

(3) wave pools: one person for each 50 square feet of water surface; and

(4) hot springs public baths: one person for each fifteen square feet of water surface.

**B.** When calculating the water surface area for bathing load, 300 square feet shall be subtracted from the total water surface area available for swimming for each diving board or platform.

[7.18.4.19 NMAC - Rp, 7.18.4.19 NMAC, 07/30/08]

**7.18.4.20 STARTING PLATFORMS:**

**A.** Starting platforms shall be removed when not in use by competitive swimmers; or

(1) shall be equipped with protective equipment designed to prevent access;

(2) be firmly secured when in use; and

(3) shall have non-slip top surfaces.

**B.** When the starting blocks are removed, anchor sockets shall be

capped.

[7.18.4.20 NMAC - Rp, 7.18.4.20 NMAC, 07/30/08]

**7.18.4.21 GATES AND DOORS IN PUBLIC POOL ENCLOSURES:**

Gates and doors shall not be blocked open or otherwise disabled to prevent closing and latching. Facilities providing lifeguard service and monitored public access may have open gates or doors during operating hours. [7.18.4.21 NMAC - Rp, 7.18.4.21 NMAC, 07/30/08]

**7.18.4.22 WATER SLIDE OPERATION:**

**A.** An attendant shall be on duty at the slide splash area.

**B.** The platform area shall have an attendant in place.

**C.** The waterslide may not be used if the main drain of the splash pool is not clearly visible from the deck when the flume water is turned off.

**D.** Entry to the waterslide shall be regulated so that only one person is allowed to enter the slide every ten seconds.

**E.** Radio communication or other means of communication approved by the department shall be provided between the flume entry attendant and the splash pool or slide runout lifeguard.

**F.** Each waterslide shall provide the flume entry attendant the means to monitor the slide entry and exit.

**G.** If a facility is required to have a lifeguard, all slide splash areas must be in clear view of a lifeguard.

[7.18.4.22 NMAC - Rp, 7.18.4.22 NMAC, 07/30/08]

**7.18.4.23 TEMPORARY SPECIAL USE POOLS:**

Owners of pools that are used for public promotions at sports fields, county fairs, portable pools and similar special uses shall be reviewed by the department on an individual case basis. The department may require special conditions as part of approval of such pools to assure health and safety.

[7.18.4.23 NMAC - Rp, 7.18.4.23 NMAC, 07/30/08]

**7.18.4.24 INSTRUCTIONAL USE OF CLASS B POOLS:**

The department may allow the use of class B public pools for swimming related instruction to the general public provided that:

**A.** use by the public is limited to instruction classes only;

**B.** the instructor shall be certified by the American red cross or an equivalent organization in first aid and CPR; and be trained to deal with safety hazards related to the particular attraction at which they are employed;

**C.** the department is notified in advance of the time and place of the classes; and

**D.** sanitary facilities are available to bathers as required in 7.18.3.49 NMAC.

[7.18.4.24 NMAC - Rp, 7.18.4.24 NMAC, 07/30/08]

**7.18.4.25 LIFE SAVING EQUIPMENT:**

The following lifesaving equipment shall be provided at all public pools and baths in a location where it is easily accessible by persons using the pool.

**A.** Required signs, as specified in 7.18.4.26 NMAC, shall be posted on all public pools and public baths where they can be easily seen by persons using the pool.

**B.** All public pools and baths shall post signs stating the location of the emergency phone and in accordance with 7.18.3.32 NMAC.

**C.** A sign shall be posted at the phone that indicates emergency phone numbers and the facility address to enable emergency and rescue personnel to locate the public pool or bath.

**D.** All public pools and baths shall be equipped with a first aid kit. The kit shall be placed in a department approved location and shall include the following first aid supplies:

(1) first aid pocket guide;

(2) first aid kit supply list;

(3) assorted sterile gauze pads with adhesive tape;

(4) antiseptic wipes or hydrogen peroxide;

(5) scissors and tweezers;

(6) triangular bandages;

(7) roller gauze;

(8) blood borne pathogen spill kit;

(9) disposable single use gloves;

(10) eye protection, face shield, or goggles;

(11) mask or barrier for rescue breathing or CPR;

(12) heat retention blanket;

(13) small trash bag or biohazard bag; and

(14) assorted adhesive bandage strips.

**E.** All public pools shall be equipped with devices, in good operating condition, to aid victims in distress as follows:

(1) a light and sturdy rescue pole at least 12 feet in length with a double crook life hook attached;

(2) two or more U.S. coast guard approved ring buoys, located at opposite sides of the pool, with an attached one quarter inch rope not less than one and one-half times the maximum width of the pool or swimming area;

(3) at pools requiring lifeguards, a backboard with means to secure victim to the board and provide immobilization of head, neck, and back; and

(4) at pools requiring lifeguards, one rescue tube per lifeguard shall be provided.

**F.** All public pools shall be equipped with a clearly marked emergency pump shut-off switch to be located within 20 feet, but no closer than four feet, of a pool.

(1) The shut-off switch shall be accessible to the public, have an audible alarm, and operate at all times.

(2) An automatic shut-off system may be installed in lieu of a manual shut-off switch.

**G.** Except where required by the department, the equipment required in 7.18.4.25 NMAC shall not apply to public spa pools, wading pools, spray pads and public baths.

[7.18.4.25 NMAC - Rp, 7.18.4.25 NMAC, 07/30/08]

**7.18.4.26 REQUIRED SIGNS:**

**A.** An American red cross resuscitation chart, or equivalent, shall be conspicuously posted in the swimming pool area.

**B.** A sign shall be posted in the pool enclosure or barrier stating the design bathing load capacity of the pool. The pool owner shall be responsible for seeing that the maximum bathing load capacity is not exceeded.

**C.** A sign shall be posted in the pool enclosure or barrier stating "Warning- no lifeguard service is provided. All children under the age of 14 shall be accompanied by an observer 18 years or older. In case of emergency, contact: (a person or emergency telephone number shall be stated on the sign).

**D.** A precaution sign or signs shall be mounted adjacent to the entrance of a spa or bath, which read as follows.

(1) "Extended exposure to hot water may be detrimental to the health of elderly persons, persons with health problems, such as heart conditions, diabetes, or low/high blood pressure, small children, or pregnant women. Consult with a physician before using spa or bath."

(2) "Do not use the spa or bath while under the influence of alcohol, narcotics, or other drugs that cause sleepiness, drowsiness, or raise/lower blood pressure."

(3) For spas: "Do not use the spa alone." For public baths: "Do not use the bath alone unless an attendant is on duty."

(4) "Over exposure to heated water may cause nausea, dizziness, and fainting."

**E.** Whenever a pool, spa or bath is closed to swimming for any reason, all gates and doors not utilized for egress to other parts of the building or buildings shall be locked. When the department orders that a pool, spa or bath shall be closed, the department shall post signs stating so at all entrances.

**F.** Signs shall be posted describing the proper way to use a pool slide or water slide. The signs shall contain wording that includes the following.

(1) "Slide feet first only."

(2) "Slide sitting up or lying on your back."

(3) "Only one person at a time may be on the slide."

(4) "Always enter the pool feet first; do not somersault, twist, or dive from the end of the slide."

[7.18.4.26 NMAC - Rp, 7.18.4.26 NMAC, 07/30/08]

#### 7.18.4.27 **FECAL ACCIDENT PROCEDURE:**

**A.** The following procedure shall be used for a formed stool that is solid and non-liquid.

(1) Direct everyone to leave all pools into which water containing the feces is circulated. Do not allow anyone to enter the contaminated pool until all decontamination procedures are completed.

(2) Remove as much of the fecal material as possible using a net or scoop and dispose of it in a sanitary manner. Clean and disinfect the net or scoop. After cleaning, leave the net or scoop immersed in the pool during disinfection. Vacuuming stool from the pool is not allowed.

(3) Raise the free available chlorine concentration to 2.0 ppm, pH 7.2-7.5. Ensure this concentration is found throughout all co-circulating pools by sampling at least three widely spaced locations away from return water outlets. This free available chlorine concentration was selected to keep the pool closure time to approximately 30 minutes. Other concentrations or closure times can be used as long as the CT inactivation value is kept constant.

(4) Maintain the free available chlorine concentration at 2.0ppm, pH 7.2-7.5, for at least 25 minutes before reopening the pool. Ensure that the filtration system is operating while the pool reaches and maintains the proper free available chlorine concentration during the disinfection process.

(5) Establish a fecal accident log. Document each fecal accident by recording the following:

(a) the date and time of the event;

(b) if the accident is a result of a formed stool or diarrhea;

(c) the free available chlorine concentration at the time or observation of the event and before re-opening the public pool;

(d) the pH at the time or observation of the event and before re-opening the public pool;

(e) the procedures followed to respond to the fecal accident (including the process used to increase free chlorine residual if necessary); and

(f) the chlorine contact time.

**B.** The following procedure shall be used for diarrhea or a non-formed stool or a liquid stool.

(1) Direct everyone to leave all pools into which water containing the feces is circulated. Do not allow anyone to enter the contaminated pool until all decontamination procedures are completed.

(2) Remove as much of the fecal material as possible using a net or scoop and dispose of it in a sanitary manner. Clean and disinfect the net or scoop. After cleaning, leave the net or scoop immersed in the pool during disinfection. Vacuuming stool from the pool is not allowed.

(3) Raise the free available chlorine concentration to 20ppm and maintain the pH between 7.2 and 7.5. Ensure this concentration is found throughout all co-circulating pools by sampling at least three widely spaced locations away from return water outlets. This chlorine and pH level should be sufficient to inactivate cryptosporidium and should be maintained for at least 8 hours, equivalent to a CT inactivation value of 9600. A higher or lower free available chlorine level/inactivation time can be used as long as a CT inactivation value equaling 9600 is maintained for cryptosporidium inactivation.

(4) Ensure that the filtration system is operating while the pool reaches and maintains the proper free available chlorine concentration during disinfection.

(5) Backwash the filter thoroughly after reaching the CT value. Be sure the effluent is discharged directly to waste and in accordance with state or local regulations. Do not return the backwash through the filter. Where appropriate, replace filter media.

(6) Pool users may be allowed in the pool after the required CT value has been achieved and the free available chlorine level has been returned to the normal operating range allowed by the department. Maintain the free available chlorine concentration and pH at standard operating levels based on state or local regulations.

**C.** The following procedure shall be used to determine the CT Value.

(1) CT refers to concentration (C) of free available chlorine in ppm multiplied by time (T) in minutes. If pool operators want to use a different chlorine concentration or inactivation time, they need to ensure that CT values always remain the same.

(a) Example one - If an operator finds a formed fecal accident in the pool and the pool has a free available chlorine reading of 3 ppm and a pH of 7.5, to determine how long the pool should be closed to swimmers, locate 3 ppm in the left column of Paragraph (3) of Subsection C of 7.18.3.26 NMAC below and then move right for the pool closure time. The pool should be closed for 19 minutes.

(b) Example two - The CT inactivation value for cryptosporidium is 9600, which equals (20 ppm) x (480 minutes). The operator determines that only 15 ppm free available chlorine can be maintained after a diarrheal accident in the pool. How long would hyperchlorination take? Answer:  $9600=CT=(15)(T)$ ;  $T=9600/15=640$  minutes=10.7 hours.

(2) Many conventional pool test kits cannot measure free available chlorine levels above 5 ppm to 10 ppm. Pool operators shall use chlorine test strips that can measure free available chlorine in a range that includes 20ppm (such as those used in the food industry) or make dilutions following DPD chlorine test kit instructions. Use chlorine-free water for dilutions.

(3) The required free available chlorine concentrations and pool closure time required for disinfection of pools after a formed fecal accident shall be as follows:

Concentration (ppm)	Pool closure time (minutes)
<0.4	105
0.6	72
0.8	55
1.0	45
1.2	39
1.4	34
1.6	30
1.8	28
2.0	25
2.2	24
2.4	22
2.6	21
2.8	20
3.0	19

(4) A free available chlorine residual of 2.0 ppm shall be present before the pool can be reopened.

[7.18.4.27 NMAC - Rp, 7.18.4.27 NMAC, 07/30/08]

#### 7.18.4.28 RECORDS:

A. Public pools shall keep daily operating records that shall include the following:

- (1) date;
- (2) time of backwashing;
- (3) disinfectant residuals;
- (4) filter pressure;
- (5) circulation rate;
- (6) pH;
- (7) types and quantities of chemicals added;
- (8) visibility of pool bottom;
- (9) the numbers of bathers;
- (10) name of certified operator;
- (11) name of life guard on duty; and
- (12) testing or calibration of automatic sensors or probes, including date, time and instrument readings before and after the calibration.

instrument readings before and after the calibration.

B. Public pools shall keep weekly records of cyanuric acid levels.

C. Public pools and baths shall record all accidents; including fecal accidents.

D. Hot springs public baths shall maintain records of water sampling and test results for a period of at least two years unless a longer time period is specified by the department. If requested by the department, reports summarizing the test results shall be submitted in a format and at a frequency specified by the department.

E. All records shall be retained for a period of at least two years unless a longer period is specified by the department. Upon request, all records shall be made available to the department for inspection or copying.

[7.18.4.28 NMAC - Rp, 7.18.4.28 NMAC, 07/30/08]

#### 7.18.4.29 RIGHT OF ENTRY:

A. Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located during the public pool's operating hours.

B. When entry is denied by the property owner, the department may seek a district court order to:

- (1) have a right of entry to, upon, or through any premises where a public pool is located;
- (2) have a right of entry on any premises where any records required by the public swimming pool rules or by permit condition are kept;
- (3) have access to and copy any records that the public swimming pool rules or a permit requires the facility to maintain;
- (4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit condition; and
- (5) obtain any sample(s) required to determine compliance with the public swim-

ming pool rules or any permit condition.  
[7.18.4.29 NMAC - Rp, 7.18.4.29 NMAC, 07/30/08]

#### 7.18.4.30 to 7.18.4.100 [RESERVED]

**7.18.4.101 CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.

[7.18.4.101 NMAC - Rp, 7.18.4.101 NMAC, 07/30/08]

**7.18.4.102 SEVERABILITY:** If any provision of application of this part is held invalid, the remainder of this part, or any other application, shall not be affected.

[7.18.4.102 NMAC - Rp, 7.18.4.102 NMAC, 07/30/08]

#### 7.18.4.103 REFERENCES IN

**OTHER REGULATIONS:** Any reference to the public swimming pool regulations or any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.4.103 NMAC - Rp, 7.18.4.103 NMAC, 07/30/08]

#### 7.18.4.104 SAVINGS CLAUSE:

Repeal or supersession of prior versions of this part or the public swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.4.104 NMAC - Rp, 7.18.4.104 NMAC, 07/30/08]

#### 7.18.4.105 COMPLIANCE WITH OTHER REGULATIONS:

Compliance with the public swimming pool rules or this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations.

[7.18.4.105 NMAC - Rp, 7.18.4.105 NMAC, 07/30/08]

#### 7.18.4.106 PENALTY:

Any person who violates any provisions of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.4.106 NMAC - Rp, 7.18.4.106 NMAC, 07/30/08]

#### 7.18.4.107 LIMITATION OF

**DEFENSE:** The existence of a valid permit for the installation, modification, or operation of a public pool shall not constitute a defense to a violation of any section



of this rule, except the requirement for obtaining a permit.  
[7.18.4.107 NMAC - Rp, 7.18.4.107 NMAC, 07/30/08]

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**TITLE 7 HEALTH  
CHAPTER 18 SWIMMING POOLS  
PART 5 PUBLIC SWIMMING POOLS, SPAS AND BATHS: FEES**

**7.18.5.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.  
[7.18.5.1 NMAC - Rp, 7.18.5.1 NMAC, 07/30/08]

**7.18.5.2 SCOPE:** Owners and operators of public swimming pools, public spas, public baths, or other public bathing attractions.  
[7.18.5.2 NMAC - Rp, 7.18.5.2 NMAC, 07/30/08]

**7.18.5.3 STATUTORY AUTHORITY:** NMSA 1978, Sections 74-1-1 through 74-1-16.  
[7.18.5.3 NMAC - Rp, 7.18.5.3 NMAC, 07/30/08]

**7.18.5.4 DURATION:** Permanent.  
[7.18.5.4 NMAC - Rp, 7.18.5.4 NMAC, 07/30/08]

**7.18.5.5 EFFECTIVE DATE:** 07/30/08, unless a later date is cited at the end of a section.  
[7.18.5.5 NMAC - Rp, 7.18.5.5 NMAC, 07/30/08]

**7.18.5.6 OBJECTIVE:** To establish fees for the administration of rules and standards regarding the inspection, enforcement, training, review of plans, and other appropriate program components for public swimming pools, public spas, public baths and other public bathing attractions as specified in 7.18.2 NMAC, Public Swimming Pools, Spas and Baths: General Provisions, 7.18.3 NMAC, Public Swimming Pools, Spas and Baths: Design and Construction, and 7.18.4 NMAC, Public Swimming Pools, Spas and Baths: Maintenance and Operation.  
[7.18.5.6 NMAC - Rp, 7.18.5.6 NMAC, 07/30/08]

**7.18.5.7 DEFINITIONS:** Unless otherwise defined in this rule, the words and phrases used in this rule have the same meanings as in Section 7.18.2.7 NMAC, Public Swimming Pools, Spas and Baths: General Provisions.  
[7.18.5.7 NMAC - Rp, 7.18.5.7 NMAC, 07/30/08]

**7.18.5.8 ADOPTION BY REFERENCE:** Outside standards, listings, and publications referenced in this rule are part of this rule.  
[7.18.5.8 NMAC - Rp, 7.18.5.8 NMAC, 07/30/08]

**7.18.5.9 ENFORCEMENT AUTHORITY:**  
**A.** Private pools shall not be subject to the provisions of this rule or to 7.18.2 through 7.18.5 NMAC.  
**B.** Department representatives shall be responsible for the enforcement of this rule.  
[7.18.5.9 NMAC - Rp, 7.18.5.9 NMAC, 07/30/08]

**7.18.5.10 CONSTRUCTION PERMIT FEES:**  
**A.** Permit fees for new construction, remodeling, or renovation issued pursuant to Section 7.18.2.10 NMAC, Construction Permits, shall be the following:

- (1) for a class A pool, class B pool, or spa pool, the fee shall be \$150.00;
- (2) for multiple class A or class B pools or spa pools located at the same site, the fee shall be \$150.00 for each class A or class B pool or spa pool;
- (3) for class E pools, public baths or spray pads, the fee shall be \$125.00 for each pool;
- (4) for a class C pool, the fee shall be \$150.00; and
- (5) for multiple class C pools located at the same site, the fee shall be \$150.00 for each special-use pool.

**B.** All applicable fees shall be paid at the time the construction permit application is submitted to the department.

**C.** All fees shall be remitted to the department by check or money order made payable to the "water recreation facilities fund."

**D.** Any check returned for non-payment for any reason shall result in cancellation of the construction permit.

**E.** All fees are non-refundable.

[7.18.5.10 NMAC - Rp, 7.18.5.10 NMAC, 07/30/08]

**7.18.5.11 OPERATING PERMIT FEES:**  
**A.** Operating permit fees issued pursuant to Section 7.18.2.12

NMAC, Operating Permits, shall be:  
(1) for all class A pools and spas, the fee shall be \$150.00 for each pool per year;

(2) for class B pools, the fee for each pool shall be:

(a) up to 600 square feet of pool surface area, \$100.00 per year;

(b) from 601 square feet to 1000 square feet of pool surface area, \$125.00 per year;

(c) from 1001 square feet of pool surface area and greater, \$150.00 per year;

(3) for all public wading pools, public baths or spray pads, the fee shall be \$100.00 for each pool per year; and

(4) for all class C pools, the fee shall be \$150.00 for each pool per year.

**B. Payment of fees.**

(1) An operating permit fee shall be assessed for each separate public pool at a facility or site.

(2) Fees are payable at the time the annual operating permit is issued by the department. Annual operating permits will not be issued until the department receives all appropriate fees.

(3) All fees shall be remitted to the department by check or money order made payable to the "water recreation facilities fund".

(4) Non-payment of all appropriate fees, including the return of any check for non-payment for any reason, shall result in cancellation of the operating permit.

(5) All fees are non-refundable.

[7.18.5.11 NMAC - Rp, 7.18.5.11 NMAC, 07/30/08]

**7.18.5.12 RE-INSPECTION FEE:** If a site inspection results in the issuance of a written notice of non-approval or suspension, the department may assess a re-inspection fee of \$50.00 to re-inspect that public swimming pool. The re-inspection fee shall be remitted to the department prior to a subsequent re-inspection being conducted.

[7.18.5.12 NMAC - Rp, 7.18.5.12 NMAC, 07/30/08]

**7.18.5.13 VARIANCE FEE:** If a variance is requested pursuant to Section 7.18.2.23 NMAC, Variance, an application fee of \$50.00 shall be remitted by the applicant at the time the variance application is submitted to the department. The fee is non-refundable.

[7.18.5.13 NMAC - Rp, 7.18.5.13 NMAC, 07/30/08]

**7.18.5.14 RIGHT OF ENTRY:**  
**A.** Upon presentation of credentials, department representatives may enter any premises where a public pool is located or where records required by the public swimming pool rules are located dur-

ing the public pool's operating hours.

**B.** When entry is denied by the property owner, the department may seek a district court order to:

(1) have a right of entry to, upon, or through any premises where a public pool is located;

(2) have a right of entry on any premises where any records required by the public swimming pool rules or by permit condition are kept;

(3) have access to and copy any records that the public swimming pool rules or a permit requires the facility to maintain;

(4) inspect any premises or equipment to determine compliance with the public swimming pool rules or any permit condition; and

(5) obtain any sample(s) required to determine compliance with the public swimming pool rules or any permit condition.

[7.18.5.14 NMAC - Rp, 7.18.5.14 NMAC, 07/30/08]

**7.18.5.15 to 7.18.5.50**  
**[RESERVED]**

**7.18.5.51 CONSTRUCTION:** This part shall be liberally construed to carry out its purpose.

[7.18.5.51 NMAC - Rp, 7.18.5.51 NMAC, 07/30/08]

**7.18.5.52 SEVERABILITY:** If any provision or application of this part is held invalid, the remainder of this part, or its application to other situations or persons, shall not be affected.

[7.18.5.52 NMAC - Rp, 7.18.5.52 NMAC, 07/30/08]

**7.18.5.53 REFERENCES IN OTHER REGULATIONS:** Any reference to the public swimming pool regulations or any prior version of the public swimming pool regulations in any other rule shall be construed as a reference to this rule. References to the "public swimming pool rules" in this part refer to all provisions contained in 7.18.2 through 7.18.5 NMAC.

[7.18.5.53 NMAC - Rp, 7.18.5.53 NMAC, 07/30/08]

**7.18.5.54 SAVINGS CLAUSE:** Repeal or supersession of prior versions of this part or the swimming pool rules shall not affect any administrative or judicial action initiated under those prior versions.

[7.18.5.54 NMAC - Rp, 7.18.5.54 NMAC, 07/30/08]

**7.18.5.55 COMPLIANCE WITH OTHER REGULATIONS:** Compliance with the swimming pool rules or this part does not relieve a person from the responsibility to comply with any other

applicable federal, state, or local regulations.

[7.18.5.55 NMAC - Rp, 7.18.5.55 NMAC, 07/30/08]

**7.18.5.56 PENALTY:** Any person who violates any provision of this rule shall be subject to the penalty provisions in NMSA 1978, Section 74-1-10 of the Environmental Improvement Act, in addition to any other penalties provided for in the public swimming pool rules.

[7.18.5.56 NMAC - Rp, 7.18.5.56 NMAC, 07/30/08]

**7.18.5.57 LIMITATION OF DEFENSE:** The existence of a valid permit for the installation, modification or operation of a pool shall not constitute a defense to a violation of any section of this regulation, except the requirement for obtaining a permit.

[7.18.5.57 NMAC - Rp, 7.18.5.57 NMAC, 07/30/08]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.30.8 NMAC, Sections, 7, 8 and 9, effective June 30, 2008.

**19.30.8.7 DEFINITIONS:**

**A.** "Guide" shall mean any person employed or contracted by a registered outfitter to furnish personal services for the purpose of hunting or taking game animals except a 'guide' does not include a person who only cooks, cuts wood, wrangles horses or escorts clients between camp and vehicle, retrieves downed game, or otherwise solely provides services not directly related to hunting or taking of game animals.

**B.** "Outfitter" shall mean any person who advertises or holds himself out for hire to the public or accepts compensation for providing, within a game management unit where a hunt occurs, equipment or services for hunting activities.

**C.** "Agent" shall mean anyone employed or contracted in writing by a landowner to oversee the hunting operations or to outfit or guide for a landowner on the landowner's deeded property or, pursuant to a landowner's permit, on a shared public or private unit.

**D.** "History of violation" means any one court conviction or multiple convictions ~~[totaling up to 20 administrative points from a hearing officer against an outfitter or guide of any state hunting or guiding law or regulation or]~~ or one or multiple citations issued from any natural

resource agency for violation(s) of hunting, outfitting or guiding rules that have been satisfied by the paying of fines of any related federal laws or land-use regulations related to outfitting, guiding or hunting, during the three-year period immediately preceding the application for registration, provided that the violation committed, if committed in New Mexico, would equal or exceed the 20-point requirement in Section 14. It shall also include any conviction for any felony, no matter when the felony was committed. It shall include any convictions as an accessory for the described crimes.

**E.** "Supervision" shall mean that outfitters are required to ensure all guides employed by them are informed of all pertinent geographic hunt boundaries and statutes and regulations regarding lawful hunting, guiding and outfitting.

**F.** "License year" shall mean that period beginning April 1 and ending March 31 each year for the purposes of hunting or outfitter and guide registration.

**G.** "Director" shall mean the director of the department of game and fish.

**H.** "Department" shall mean the New Mexico department of game and fish.

**I.** "Landowner permit" shall be a license issued pursuant to landowner authorization.

**J.** "Registered outfitter" shall be an outfitter who has met all the requirements described herein and has been issued a registration number by the department.

[9/14/96, 6/30/97, 9/15/98, 2/15/99; 19.30.8.7 NMAC - Rn & A, 19 NMAC 30.8.7, 04-30-03; A, 6-30-08]

**19.30.8.8 REGISTRATION PROCEDURES AND REQUIREMENTS:**

**A.** Application form: Applications to guide and/or outfit as defined in Section 17-2A-3 NMSA 1978 and Title 19 Chapter 30 Part 8, shall be made on forms provided by the department as prescribed by the director.

**B.** Application deadlines: All new and renewing outfitter applicants must apply by January 15 to be eligible to participate in the 12% pool of nonresident hunter applicants for the following license year. New and renewal applications post-marked after January 15 but received before close of business on February 15 (or the following business day) will be eligible for inclusion in the 12% pool of applicants, but will be subject to an administrative fee of \$100.00, in addition to the normal application fees. After February 15, applicants may renew their registration until the end of the license year (March 31) without penalty

or administrative fees, but will not be eligible to participate in the 12% pool for the upcoming year. Renewing applicants wishing to place their registration on "inactive" status must do so prior to the expiration of their current registration (March 31). New and renewing applicants applying for registration after the beginning of a new license year may outfit during that license year but may not advertise or offer their services for hire until the new application is approved. Guide applicants may apply throughout the year at any department office by submitting a completed application and appropriate fee. Examinations will be conducted during posted testing periods at department offices or by appointment, at any location approved by the outfitter guide registrar. An applicant shall only be allowed to take the examination once per day. To further expedite the guide registration process, an applicant may submit with their application, a certified felony background check obtained at applicant's expense. With application, appropriate fee, successful exam completion, and clear felony background check, an applicant will be issued a registration card allowing applicant to engage in guiding activity. All materials will be forwarded to the department's law enforcement division for further background checking and processing.

(1) Exception: In an emergency situation, a temporary guide registration may be issued to those who qualify. The temporary registration is only valid for seven (7) days and may be renewed only once per emergency situation.

(2) A guide registered pursuant to the emergency situation may only be used ~~[to replace a]~~ once a license year by the registered outfitter requesting the replacement of a registered guide who has become ill, injured or has a bona fide emergency, and may not be used to accommodate additional hunters.

C. Signature: Applications shall be signed by the applicant.

D. [Reserved]

E. Registration fee

(1) All registration fees shall be submitted with the application.

(2) All registration fees, except a \$50.00 administrative fee, will be refunded if an applicant is rejected or fails to complete the registration process within 60 days of the receipt of the application. No other refunds will be permitted.

F. Insurance: Outfitter applicants shall submit with their application a ~~[document]~~ copy of a certificate from an insurance company stating they will insure the applicant for a minimum of \$500,000 when the applicant is registered for the current license year beginning April 1.

(1) A copy of the insurance certificate that indicates who is insured, effec-

tive dates, policy number and amounts of coverage, must be provided to the department upon issuance by the insurer and prior to engaging in any outfitting activity.

(a) If an outfitter fails to submit a copy of a valid insurance certificate before the insurance certificate on file with the department expires, the non-compliance notice will be sent to the outfitter by the department. The outfitter shall be required to submit a copy of a valid insurance certificate and a \$50.00 administrative fee. No outfitter will be registered until the administrative fee has been paid in full.

(b) If the outfitter fails to comply with the non-compliance notice; the department shall issue the outfitter a notice of contemplated commission action. The outfitter shall then be required to submit a copy of a valid insurance certificate and a \$250.00 administrative fee. No outfitter will be registered until the administrative fee has been paid in full.

(2) If the insurance is not in effect, at any time while conducting any outfitting activity as defined herein, the outfitter's registration will be declared void and the outfitter's registration shall be suspended until a valid insurance certificate and administrative fees are satisfied.

G. [Reserved]

H. Exemption: A landowner or his agent, as defined in Subsection C of 19.30.8.7 NMAC, who is guiding and/or outfitting on the landowner's property or pursuant to a landowner permit, is exempt from the registration process. Nothing in this exemption shall prevent a landowner or his agent from registering, if they chose.

[9/14/96, 6/30/97, 9/15/98, 7/15/99; 19.30.8.8 NMAC - Rn & A, 19 NMAC 30.8.8, 04-30-03; A, 6-30-08]

### 19.30.8.9 QUALIFICATIONS FOR OUTFITTER REGISTRATION:

A. Outfitter registration:

(1) Applicant must be at least 21 years of age.

(2) Applicant cannot be a convicted felon or have a history of violation of any related federal land-use or state game and fish laws or regulations or guide and outfitter licensing or registration laws.

(3) An applicant must have operated as a New Mexico registered guide for three (3) years, or have been granted an interim outfitter's registration, or must submit evidence, as approved by and to the satisfaction of the department, of three (3) years of outfitting experience or other substantial knowledge of guiding or outfitting. The evidence must be submitted with the application and may consist of federal land use permits, business records, etc.

(4) Applicant must provide acceptable proof of commercial liability insurance of at least five hundred thousand

dollars (\$500,000) for the registration period April 1 through March 31 of the following year. Failure to provide proof of coverage during the registration period shall result in suspension of the registration for the period in which such insurance is required to be maintained.

(5) Applicant shall register with the taxation and revenue department and provide proof of registration to the department.

(6) Applicant shall not have had a guide or outfitter license, registration, permit or certificate suspended (if not reinstated) or revoked in any state.

(7) Applicant shall not have had his/her outfitter's license, permit or registration revoked or denied for cause by any controlling government land management agency. The applicant shall not be registered by the state during the term of the revocation or pendency of the denial.

(8) Applicant for an outfitter registration shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration.

(9) Effective September 1, 1997, applicant must pass a department approved examination with a minimum passing grade of 70 percent.

(10) Applicant shall have successfully completed a certified hunter education course from the state of New Mexico or other similar qualifying hunter education course acceptable to the department prior to making application.

B. [Reserved]

[9/14/96, 6/30/97, 7/31/97; 19.30.8.9 NMAC - Rn & A, 19 NMAC 30.8.9, 04-30-03; A, 6-30-08]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an emergency order to 19.31.4 NMAC, Section 25, effective June 5, 2008

**19.31.4.25 EMERGENCY ORDER FOR FISH SALVAGE:** Under authority of 19.31.10.14 promulgated by the state game commission on April 1, 2007, I, BRUCE C. THOMPSON, director of the department of game and fish, hereby declare that an emergency exists within the Santa Fe River in Santa Fe county. The extent to which, fish life will be destroyed by drying of the river. Bag limits on sport fish will be unlimited. Manner and method regulations will also be suspended. This relaxation will go into effect at 12:01 a.m., June 5, 2008, and will remain in effect through 11:59 p.m., June 9, 2008.  
[19.31.4.25 NMAC - N/E, 6-5-08]

**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an amendment to 19.31.10 NMAC, Sections, 7 and 14, effective June 30, 2008.

**19.31.10.7 DEFINITIONS:**

**A. "Big game species"** shall mean deer, bear, cougar, elk, pronghorn antelope (American pronghorn), Barbary sheep, bighorn sheep, javelina, oryx, and Persian ibex.

**B. "Modern firearms"** shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

**C. "Muzzle-loader or muzzle-loading firearms"** shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

**D. "Restricted muzzle-loading rifle"** shall mean any muzzle-loading rifle using open sights, black powder or equivalent and firing a traditional lead bullet. The use of in-line ignition, scopes, pelleted powder, smokeless powder and sabots, including powerbelt-type projectiles, are prohibited.

**E. "Bow"** shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

**F. "Arrows"** shall mean only those arrows or bolts having broadheads with steel cutting edges.

**G. "Trotline"** shall be synonymous with "set line" or "throw line" or "jug", and shall mean a fishing line that is used without rod or reel and that need not be held in the hand or closely attended.

**H. "Angling"** shall mean taking or attempting to take fish by angling hook and line, with the line held in the hand or attached to a pole or rod or other device that is held in the hand or closely attended.

**I. "Spear fishing"** shall mean taking or attempting to take game fish with spears, jigs, and arrows with barbs that are discharged under the surface of the water.

**J. "Bait fish"** is defined as those nongame fish which are not otherwise protected by statute or regulation.

**K. "Chumming"** is defined as a means of attracting fish by placing organic materials, non-injurious to aquatic life, into the water.

**L. "Protected species"**

shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals defined as furbearing animals under Section 17-5-2 New Mexico Statutes Annotated 1978 Compilation;

(3) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

**M. "Retention"** or "retain" shall mean the holding of in captivity.

**N. "Established road"** is defined as follows:

(1) a road, built and/or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

**O. "Non-toxic shot"** shall mean shot approved for use by the U. S. fish and wildlife service.

**P. "Director"** shall mean the director of the New Mexico department of game and fish.

**Q. "Baiting"** shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take protected game mammals or game birds.

**R. "Nets"** shall mean cast nets, dip nets, and seines which shall not be longer than 20 feet and shall not have a mesh larger than three-eighths of an inch.

**S. "Barbless lure or fly"** shall mean an artificial lure made of wood, metal, or hard plastic or an artificial fly made from fur, feathers, other animal or man-made materials tied onto [a] an angling hook to resemble or simulate insects, bait fish, or other foods. A barbless fly or lure may only bear a single hook, from which any or all barbs must be removed or bent completely closed, or which are manufactured without barbs. Living or dead arthropods and annelids, or rubber or plastic moldings of these or other foods are not included.

**T. "Crossbow"** shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold

the string in a cocked position. Sights on crossbows shall not project light nor magnify.

**U. "Angling hook"** shall mean a single, double, or treble (triple) point attached to a single shank.

[19.31.10.7 NMAC - Rp, 19.31.10.7 NMAC, 4-1-2007; A, 6-30-2008]

**19.31.10.14 FISHING:**

**A. Angling:** Game fish may be taken by angling in all waters that are open for fishing.

**B. Trotlines:**

(1) It is unlawful for any person to set more than one trotline at a time. It is unlawful to tie or join together trotlines belonging to two or more persons.

(2) It is unlawful for trotlines to have more than 25 angling hooks.

(3) A person fishing with a trotline shall personally visit and inspect the trotline at least once every 24 hours. Failure to check a trotline every 24 hours is a violation of this paragraph.

(4) It is unlawful for anyone to tamper with another's trotline.

(5) A person fishing with a trotline shall attach to it an identification tag that is visible above the water line. The identification tag shall bear the fisherman's name, address, fishing license number, and the date the trotline was set. An unlicensed fisherman under 12 years of age shall also list his date of birth.

(6) It is unlawful to set or use a trotline in trout waters, with the following exceptions: Abiquiu lake, Chama river downstream from the northern boundary of the Monastery of Christ in the desert, Gila river downstream from its junction with its east fork, Navajo Lake and the Rio Grande downstream from its junction with the Chama river.

(7) Any conservation officer or other officer authorized to enforce the game laws may seize and confiscate any trotlines not set in accordance with this subsection.

**C. Illegal device or substance:** It is unlawful to use any device or substance capable of catching, stupefying, or killing fish except as permitted by regulation.

**D. Bait:** It is unlawful to use protected fish, live bullfrogs, or live bullfrog tadpoles as bait in any waters containing protected species. EXCEPTION: the genus *Lepomis* taken by legal means of angling may be used as live bait in the water from which they were taken only in the following waters: Abiquiu reservoir, Cochiti lake, Elephant Butte reservoir, Caballo reservoir, Stubblefield lake, Maxwell lakes, Clayton lake, Conchas lake, Ute lake, Santa Rosa lake, Lake Sumner, Brantley reservoir, and Navajo reservoir. *Lepomis* may be

used as cut bait; roe, viscera, and eyes of legally taken game fish may be used as bait; and bullfrogs and bullfrog tadpoles may be used as cut bait. Live bullfrogs may not be in possession while fishing.

**E. Use of bait fish:**

(1) It is unlawful to use gar (*Lepisosteus* spp.) and goldfish (*Carassius auratus*) for bait fish in all waters.

(2) It is unlawful to use live common carp (*Cyprinus carpio*), river carpsucker (*Carpoides carpio*), and smallmouth buffalo (*Ictiobus bubalus*) in all waters. However, these species may be used as cut bait in any water where bait may be used.

(3) It is unlawful to use bait fish in all trout waters except fathead minnows and red shiners may be used in the following trout waters: Abiquiu Clayton lake, Jackson lake, lake 13 (Maxwell refuge), Navajo lake, Caballo lake, the Rio Grande downstream of the Taos junction bridge (excluding the special trout water described in 19.31.4.11 NMAC), Power dam lake, and the Animas river.

(4) It is unlawful to use any bait fish in Bitter lake national wildlife refuge and Bottomless lakes state park.

(5) Bait fish may be used in all other waters with the following restrictions:

(a) In the Gila river and San Francisco river drainages only fathead minnows may be used.

(b) In the Pecos river drainage only fathead minnows and red shiners may be used.

(c) In the Rio Grande drainage only fathead minnows, red shiners, and shad may be used except in Elephant Butte and Caballo where golden shiners are also allowed.

(d) In the Canadian river drainage only fathead minnows, red shiners, and shad may be used.

(e) In the San Juan river drainage only fathead minnows and red shiners may be used.

**F. Release of bait fish:** It is unlawful to release any bait fish into any water containing game fish.

**G. Eradication of fish:** In waters where fish are being eradicated or where water shortage warrants reduction of fish numbers, the director may permit licensed fishermen and unlicensed persons under 12 years of age to take and possess game fish in numbers exceeding current bag and possession limits. In granting such permission, the director may specify bag and possession limits and manner and method of taking for such waters.

**H. Bait fish for personal use:** Licensed fishermen and unlicensed persons under 12 years of age may take minnows and nongame fish for personal use only. They may use angling, nets, traps, and seines. All protected species of fish taken in

seines, nets, and traps shall be immediately returned to the water.

**I. Illegal taking of bait fish:** It is unlawful for licensed minnow dealers to take bait fish for sale from waters not specified on their licenses. They may take these fish only by use of traps, seines, and/or cast nets, as specified on their licenses. All protected species of fish taken in such traps, seines, or nets shall be immediately returned to the water from which they were taken.

**J. Methods for taking bait fish:** Bait fish may be taken in waters containing game fish by angling, spears, and arrows.

**K. Permits for taking bait fish:** The director may issue permits for the use of nets, seines, traps, or cast nets in taking bait fish in waters containing protected species of fish. The permit shall specify methods of taking, places for taking, and duration of the permit. The permittee shall report monthly the species, numbers and poundage of nongame fish taken during the preceding month.

**L. [Reserved] Limit on angling hooks:** It is unlawful to angle with more than two (2) barbless lures or flies with single point angling hooks on a single line when fishing the special trout water on the San Juan river designated in Subsection A of 19.31.4.11 NMAC.

**M. [Reserved]**

**N. Number of fishing poles:** It is unlawful to angle with more than one pole without having a current two rod validation or stamp affixed on the current license. It is unlawful under any circumstance to angle with more than two poles.

**O. Exceeding daily bag limit:** It is unlawful to exceed the daily bag limit and/or possession limit of any protected fish species, as specified in Title 19, Chapter 31, Part 4.

**P. Snagging game fish:** It is unlawful to snag game fish except during the special kokanee salmon season as specified in Title 19, Chapter 31, Part 4.

**Q. Chumming:** It is unlawful to "CHUM" except in the following waters: All waters designated as warm waters; Gila river downstream from its junction with its east fork; Rio Grande downstream from its junction with the Chama river, excluding the special trout water below Elephant Butte dam described in Subsection A of 19.31.4.11 NMAC.

**R. Special trout waters:** Only barbless lures or flies may be used in the special trout waters designated in Subsection A of 19.31.4.11 NMAC, except in the special trout water on the Rio Grande below Elephant Butte dam in which soft plastic lures may also be used.

**S. Attracting or concentrating fish:**

**(1) Artificial lights:** Use of artificial lights is permitted for attracting game fish.

**(2) Disturbing the bottom:** It is unlawful in all special trout waters defined in Subsection A of 19.31.4.11 NMAC, to disturb or dislodge aquatic plant growth, sediment, or rocks for the purpose of attracting or concentrating fish. It shall also be unlawful to angle in the immediate vicinity where such disturbance has occurred.

**T. Spears, gigs, and arrows:**

(1) Spears, gigs, and arrows with barbs that are discharged beneath the water may be used only in lakes and reservoirs open to fishing.

(2) In addition, during the season established by Subsection B of 19.31.4.9 NMAC, kokanee salmon may be taken by the use of spears, gigs, and arrows with barbs that are discharged above or below the water and not driven by explosives, gas, air, or crossbow, except in the Pine river where spears, gigs, and arrows are prohibited.

**U. Exemption of two rod validation requirement:** A two rod validation or stamp is not required in warm waters as defined in Subsection C of 19.31.4.8 NMAC until April 1, 2004.

[19.31.10.14 NMAC - Rp, 19.31.10.18 NMAC, 4-1-2007; A, 6-30-2008]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.5 NMAC, Section 16 effective June 30, 2008.

### 15.1.5.16 APPLICATION FOR FINDING OF SUITABILITY; CERTIFICATION:

**A.** The public interest requires that all key executives of an applicant or licensee obtain findings of suitability.

**B.** Pursuant to the act, this rule constitutes a request and requirement by the board that each key executive employed by a licensee shall submit an application of finding of suitability within 30 days of the first day of employment as a key executive. The licensee shall send a facsimile or e-mail notice to the board no later than 96 hours after the first day of employment listing the date of employment, name, and title of position of the key executive.

**C.** The following persons are, or may be, subject to that requirement:

(1) any person who furnishes services or property to a gaming operator licensee under an agreement pursuant to which the person receives compensation based on earnings, profits or receipts from

gaming;

(2) any person who does business on the gaming establishment;

(3) any person who provides goods or services to a gaming operator licensee for compensation that the board finds grossly disproportionate to the value of the goods or services;

(4) an officer, director, equity security holder of 5% or more, partner, general partner, limited partner, trustee or beneficiary of a company licensee or company applicant;

(5) the key executives of a company licensee or company applicant;

(6) if the applicant or licensee is or will be a subsidiary, the holder of 5% or more of the equity security of a holding company or intermediary company that is not a publicly traded corporation;

(7) an officer, director, or key executive of a holding company, intermediary company or publicly traded corporation that is or is to become actively and directly engaged in the administration or supervision of, or any other significant involvement with, the activities of a subsidiary licensee or applicant;

(8) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 5% or more of any voting securities in a publicly traded corporation registered with the board if the board determines that the acquisition would otherwise be inconsistent with the policy of the state;

(9) each person who, individually or with others, acquires, directly or indirectly, beneficial ownership of 10% or more of any class of voting securities in a publicly traded corporation certified by the board;

(10) the following members of a nonprofit organization gaming operator applicant or licensee: (a) the president or commander if the president or commander will have the power to exercise significant influence over decisions concerning any part of the licensed operations of the licensee or will be directly involved in the gaming activities of the licensee; (b) officers with check-writing authority or other financial responsibility; (c) board members; (d) key executives, such as the gaming manager and the officers, employees, volunteers and other persons designated by the nonprofit organization as key executives; and (e) any person who has access to the internal structure or software of any gaming machine or associated equipment; and

(11) any other person as deemed necessary by the board to protect the public health, safety, morals and general welfare.

**D.** A finding of suitability relates only to the involvement specified in the application. A key executive shall seek a new determination from the board within

30 days if there is any change in the nature of the involvement from that for which the key executive was previously found suitable by the board.

**E.** The board may waive the requirement for finding of suitability of an institutional investor or foreign institutional investor unless the board determines that public policy requires that the institutional investor or foreign institutional investor apply for such a finding.

**F.** A beneficial owner of an equity interest required to apply for a finding of suitability pursuant to Paragraph (8) of Subsection C of 15.1.5.16 NMAC or Paragraph (9) of Subsection C of 15.1.5.16 NMAC above may be deemed suitable by the board if the person has been found suitable by a gaming regulatory authority in another jurisdiction and provided the board finds that the other jurisdiction has conducted a thorough investigation that is comparable to investigations conducted by the board to determine suitability.

**G.** In making a determination of suitability for any other person that applies for a finding of suitability pursuant to this section, the board may consider, to the extent deemed appropriate by the board, the contents of a finding of suitability issued for that person by a gaming regulatory authority in another jurisdiction or by another state or federal licensing authority.

**H.** The board may deny, revoke, suspend, limit, or restrict any finding of suitability or application for such finding on the same grounds as it may take such action with respect to other licenses and licensees. The board also may take such action on the grounds that the person found suitable is associated with, controls, or is controlled by, an unsuitable person.

**I.** Upon final determination by the board of the applicant's suitability, the board shall issue a certification of such finding to the applicant.

**J.** A person seeking a finding of suitability as a key executive of a nonprofit gaming operator applicant or licensee is not required to be a member of the nonprofit organization. The key executive may provide services to the nonprofit gaming operator licensee on a paid or volunteer basis.

**K.** An applicant for a gaming license or a licensee is responsible for ensuring that key person applications are filed in accordance with the act and this rule. The board may delay approval of or deny an application for a gaming license on the grounds that a key executive application has not been submitted.

**L.** No ~~person~~ licensee shall ~~be employed~~ employ as a key executive any person who has failed to file an application for finding of suitability as

required by this rule. A licensee shall ~~be subject to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if the licensee fails to ensure that the key executive has made the required application or employs as a key executive anyone who is required to file an application for finding of suitability but has failed to do so~~ ensure that each key executive has made the required application.

[11/30/98; 15.1.5.16 NMAC - Rn & A, 15 NMAC 1.5.16, 3/31/00; A, 10/15/00; A, 2/14/02; A, 7/31/02; A, 2/28/05; A, 5/15/07; A, 6/30/08]

## NEW MEXICO GAMING CONTROL BOARD

**This is an amendment to 15.1.8 NMAC, Sections 10, 14, 15, 17, 18 and 19, effective June 30, 2008.**

### 15.1.8.10 REPORTING AND PAYMENT PROCEDURES:

**A.** Fees required under the act and all reports relating to taxes and fees shall be received by the board not later than the due date specified by law. In addition, reports relating to taxes shall be received by taxation and revenue not later than the due date specified by law. Fees and reports shall be deemed to be timely filed if the licensee shows, to the board's satisfaction, that the licensee deposited the fees and reports in a United States post office or mailbox, with first-class postage prepaid, properly addressed to the board, and in the case of tax reports, to taxation and revenue, within the time allowed for payment of the fees and filing of the reports.

**B.** All gaming operator licensees shall remit to the state the gaming tax as provided for by the act. Tax payments shall be calculated based on net take from the gaming operator licensee's gaming machines, as verified by the machines' soft meters.

**C.** A gaming operator licensee shall establish and maintain a single gaming tax transfer account exclusively for gaming tax payments to the taxation and revenue. In maintaining such bank account:

(1) the gaming operator licensee shall maintain a minimum balance at all times in the gaming tax transfer account; alternatively, the account shall be secured at all times by a letter of credit or bond issued by a bank or security company acceptable to the board; for purposes of this subsection, "bond" includes cash, cash equivalent instruments or such other instruments as the board determines provide immediate liquidity;

(2) the minimum balance or the security shall be equivalent to at least 6% of

the previous month's net take from all gaming machines of the non-profit gaming operator licensee and at least 15% of the previous month's net take from all gaming machines of the racetrack gaming operator licensee;

(3) no withdrawals from the gaming tax transfer account shall cause the account balance to be less than the minimum balance requirement described above;

(4) the gaming tax is due on or before the date designated by taxation and revenue; funds in the gaming tax transfer account shall be transmitted no later than the designated day; any account found with insufficient funds shall constitute a violation of this subsection ~~[and an unsuitable method of operation];~~

(5) tax liability shall be calculated based on gaming machine polling for the previous month; and

(6) any delinquent monies not available in the bank and account designated by taxation and revenue at the time of any required tax payment shall be subject to an interest penalty as determined by taxation and revenue; the interest penalty is in addition to any other penalties imposed by the board or taxation and revenue.

**D.** All gaming operator licensees shall be liable for all portions of gaming revenue from such times as the funds are received into the gaming machine until the funds are deposited into the designated bank and account of taxation and revenue.

[12/31/98; 15.1.8.10 NMAC - Rn & A, 15 NMAC 1.8.10, 10/15/00; A, 12/28/01; A, 2/28/05; A, 5/15/07; A, 6/30/08]

#### **15.1.8.14 TAX RETURNS; AUDITED FINANCIAL STATEMENTS; OTHER LICENSEES:**

**A.** Racetrack gaming operator, distributor, and manufacturer licensees shall submit copies of their federal income tax returns to the board within 30 days of filing their returns with the internal revenue service. If a licensee files an "application for automatic extension of time to file U.S. income tax return" with the internal revenue service, the licensee shall submit a copy of the request for extension within 30 calendar days of submitting such request to the internal revenue service.

**B.** Racetrack gaming operator, distributor, and manufacturer licensees shall submit annually two copies of their audited financial statements with comparative figures from the prior year covering all financial activities of the licensee to the board no later than 120 days after the close of the licensee's fiscal year end.

**C.** Each licensee shall engage an independent certified public accountant who shall audit the financial statements in accordance with auditing

standards generally accepted in the United States of America. The financial statements shall be prepared in conformity with accounting principles generally accepted in the United States of America.

**D.** In the event of a license termination or change in business entity, the licensee or former licensee ~~[will]~~ shall, not later than 90 days after the event, submit to the board two copies of its financial statements, or if required by the board, audited financial statements, covering the period from the end of the period covered by the previous financial statement to the date of the event. If a license termination or change in business entity occurs within 90 days after the end of a business year for which a financial statement has not been submitted, the licensee may submit financial statements covering both the business year and the final period of business rather than separate statements.

**E.** If a licensee changes its business year, the licensee ~~[must]~~ shall prepare and submit to the board financial statements covering the period from the end of the previous business year to the beginning of the new business year, submitted within 90 days after the end of the period. Such financial statements ~~[must]~~ shall be audited if required by the board. With board approval, the licensee may incorporate the financial results of the period in the financial statements for the new business year.

**F.** The licensee shall submit to the board a copy of any audit and review findings reports and management advisory letters with the audited financial statements and independent auditor's report on compliance with minimum internal control standards. The licensee shall submit audit and review reports and management advisory letters within 30 days of receipt.

**G.** The board may request additional information and documents from either the licensee or the licensee's independent certified public accountant, directly or through the licensee, regarding the financial statements or services performed by the accountant. ~~[Failure to submit the requested information or documents constitutes an unsuitable method of operation.]~~ The licensee shall provide all additional information requested by the board.

[12/31/98; 15.1.8.14 NMAC - Rn, 15 NMAC 1.8.14, 10/15/00; A, 5/14/04; A, 6/30/08]

#### **15.1.8.15 SYSTEM OF INTERNAL CONTROL PROCEDURES FOR LICENSEES:**

**A.** Each licensee shall establish written administrative and accounting procedures for the purpose of verifying the licensee's liability for taxes under the act and for the purpose of exercising effective control over the licensee's

internal financial affairs. The procedures shall be designed to satisfy the requirements, and include the provisions, set forth in Section 60-2E-35 of the act. In addition, the gaming operator licensee's or applicant's procedures shall meet the minimum standards established pursuant to board regulations.

**B.** The licensee shall not implement internal control procedures that do not satisfy the minimum standards unless the board, in its sole discretion, determines that the licensee's proposed internal control procedures satisfy the requirements set forth in Section 60-2E-35 of the act and approves the proposed system in writing. Within 30 days after a licensee receives notice of such approval, the licensee shall comply with the approved procedures, amend its written procedures as necessary, and submit to the board a copy of the written procedures as amended and a written description of the variations from the minimum control standards. The licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner shall sign the report.

**C.** Each racetrack licensee shall require its independent certified public accountant to submit to the licensee, on an annual basis, two copies of a written report analyzing the licensee's compliance with approved procedures and minimum control standards. Using the criteria established by the board, the accountant shall report each event and procedure that the accountant believes does not satisfy the minimum standards or variations that have been approved by the board in writing pursuant to Subsection B of 15.1.8.15 NMAC. Not later than 120 days after the end of the licensee's business year, the licensee shall submit to the board a copy of the accountant's report and any other documentation relating to the licensee's items of noncompliance noted by the accountant and describing the corrective measures taken.

**D.** Before adding any computerized system for monitoring gaming machines or any computerized associated equipment, the licensee shall do the following:

(1) amend its accounting and administrative procedures and internal controls to comply with the minimum standards;

(2) submit to the board a copy of the procedures as amended and a written description of the amended procedures signed by the licensee's chief financial officer and either the licensee's chief executive officer or a licensed owner;

(3) comply with any requirements imposed by the board regarding administrative approval of computerized gaming machine monitoring systems or associated equipment; and

(4) after complying with Paragraph (1) of Subsection D of 15.1.8.15 NMAC through Paragraph (3) of Subsection D of 15.1.8.15 NMAC above, implement the procedures as amended.

E. If the board determines at any time that the licensee's administrative or accounting procedures do not comply with the requirements of this section, or the licensee is out of compliance with the approved minimum internal controls, the board shall notify the licensee in writing. Within 30 days after the date of such notice, the licensee shall amend its procedures accordingly, submit a copy of the amended procedures, and provide, in writing, a description of any remedial measures taken.

~~F. Failure to comply with the minimum standards or any approved variations minimum standards constitutes an unsuitable method of operation.~~

[12/31/98; 15.1.8.15 NMAC - Rn & A, 15 NMAC 1.8.15, 10/15/00; A, 12/28/01; A, 2/28/05; A, 6/30/08]

#### 15.1.8.17 TRANSMISSION OF DAILY REPORTS OF GAMING RECEIPTS AND PAYOUTS:

A. Information regarding the preceding day's gaming receipts and payouts shall be made available to the board through the central monitoring system by no later than 8:00 a.m. the next day. In case of an electronic or other malfunction of the central monitoring system or the licensee's site controller, the gaming operator licensee may, with board approval, submit a hard copy of the report to the board by fax transmission or other approved reporting method. The licensee shall notify the board of the malfunction and request approval of an alternative reporting method before the reporting deadline. ~~[Persistent failure of the licensee to comply with the requirements of this rule constitutes an unsuitable method of operation.]~~

B. The board may access current data from the licensee's site controller at any time the board determines such access is necessary or appropriate. [12/31/98; 15.1.8.17 NMAC - Rn, 15 NMAC 1.8.17, 10/15/00; A, 2/28/05; A, 6/30/08]

#### 15.1.8.18 NONPROFIT LICENSEES; SEPARATE OPERATING ACCOUNTS:

A. Nonprofit licensees shall establish and maintain a separate operating account exclusively for the deposit of all gaming funds. The account shall be in a financial institution that is licensed by the state, in a national bank with an office in the state, or in another financial institution acceptable to the board. The bank or other financial institution shall not be an affiliate

of the nonprofit licensee.

B. The operating account is subject to the following restrictions and requirements:

(1) all net revenue after replenishment of imprest funds shall be deposited into the gaming operating account;

(2) a nonprofit gaming licensee who does not prepare and file a correct financial statement shall deposit all gaming funds into their gaming operating account after each drop and count; determination of this requirement should be made by the board or their designee; once the deposit is made, a check is written back to the cashier cage and/or vault (if applicable) for replenishment;

(3) at the end of the month, the required charity and educational funds shall be transferred from the operating account into the charity account;

(4) at the end of the month, the required gaming tax shall be transferred from the operating account into the gaming tax account;

(5) the nonprofit licensee shall maintain detailed records of all deposits into, and withdrawals and disbursements from, the operating account;

(6) monies in the operating account, with the exception of charity fund transfers, discretionary fund transfers and gaming tax fund transfers, shall be used exclusively for the payment of allowable gaming expenses; and

(7) gaming funds shall not be commingled with any other monies of the nonprofit organization licensee.

C. ~~[Commingling of]~~ A non-profit licensee shall not commingle gaming funds and other monies of the non-profit licensee [and] or use [of] any monies in the operating account for any purpose other than the payment of allowable gaming expenses, charity and educational fund transfers, discretionary fund transfers, and gaming tax fund transfers as identified in this title [constitute unsuitable methods of operation].

D. Non-profit licensees shall establish and maintain a separate charity and education bank account exclusively for the deposit of all required charitable and educational funds. The account shall be in a financial institution that is licensed by the state, a national bank with an office in the state, or in another financial institution accepted by the board. The bank or other financial institution shall not be an affiliate of the non-profit organization gaming operator licensee.

E. The charitable and education account is subject to the following restrictions and requirements:

(1) non-profit licensees shall deposit the required charity/educational

percentage of net revenue (gross revenues less jackpot payouts) into their charity/educational account by the end of each month;

(2) the non-profit licensee shall maintain detailed records of all deposits into, and withdrawals, and disbursements from, the charity/educational account unless an exemption is granted by the board;

(3) monies in the charity/educational account shall be used exclusively for charitable and educational payments as set forth in this title; and

(4) charitable/educational funds shall not be commingled with any other monies of the non-profit gaming licensee.

[12/31/98; 15.1.8.18 NMAC -Rn, 15 NMAC 1.8.18, 10/15/00; A, 5/14/04; A, 6/30/08]

#### 15.1.8.19 MINIMUM BANKROLL REQUIREMENTS:

A. Each gaming operator licensee shall maintain, in the manner required or approved by the board:

(1) cash or cash equivalents in an amount equal to the value of the highest possible jackpot that could be won from a single gaming machine at the gaming establishment plus the value of the cash winnings and non-cash prizes to be paid in periodic payments or such higher amount as the board may determine; and

(2) if the gaming operator licensee operates a progressive system, cash or cash equivalents in an amount the board finds sufficient to protect the gaming operator licensee's patrons against defaults in gaming debts owed by the licensee.

B. If at any time the licensee's available cash or cash equivalents are less than the amount required by this section, the licensee shall immediately notify the board of the deficiency. ~~[Failure to maintain the minimum bankroll requirement or a higher bankroll as required by the board, or failure to notify the board of any deficiencies, is an unsuitable method of operation.]~~

[12/31/98; 15.1.8.19 NMAC - Rn, 15 NMAC 1.8.19, 10/15/00; A, 2/28/05; A, 6/30/08]

### NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.9 NMAC, Section 8 effective June 30, 2008.

#### 15.1.9.8 GENERAL REQUIREMENTS:

A. The gaming operator licensee or applicant shall develop, implement and maintain appropriate written internal procedures and controls for the operation of gaming machines on the



licensed premises which shall be reviewed by the board or board's designated representatives. The procedures and controls shall be sufficient, as determined by the board, to ensure the accuracy, reliability, and security of the function performed, process used, and information produced. The gaming operator licensee's internal controls shall provide at least the level of control described in this rule, and shall, at a minimum conform to the standards established in the minimum internal controls for nonprofits gaming operations licensees dated March, 2007 or the minimum internal controls for racetrack gaming operations, dated August, 2006, appended hereto as appendix 1 and 2 respectively, unless a variance has been approved by the board.

**B.** Whether or not specified in a particular section or paragraph, the gaming operator licensee's internal controls shall identify the employees authorized to perform each function and shall ensure an appropriate level of security for each function.

**C.** Computer applications that provide controls equivalent in accuracy, reliability, and security to the standards set forth in this rule or otherwise adopted by the board shall be acceptable to the board.

**D.** Any amendment to a licensee's internal controls shall be provided in writing to the board or the board's designee before implementation by the licensee.

**E.** Any amendment that does not meet the standards of the minimum internal controls shall come before the board for approval.

~~**F.** Failure to develop and implement the necessary internal controls, implementation of substandard internal controls, or failure to obtain board approval before amending internal controls, constitutes an unsuitable method of operation.~~

**[G] E.** The board, in its discretion, may waive specific standards contained in this rule upon submission by the licensee of alternative procedures that ensure a comparable level of security.

[N, 12/31/98; 15.1.9.8 NMAC - Rn & A, 15 NMAC 1.9.8, 1/31/02; A, 2/28/05; A, 5/15/07; A, 6/30/08]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.10 NMAC, Sections 7, 8, 9, 19, 21, 22, 23, 25, 30, 36 and 43, effective June 30, 2008.

### 15.1.10.7 DEFINITIONS:

Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act:

**A.** "act" means the

Gaming Control Act;

**B.** "additional payout" means a supplemental cash payout, based on a jackpot, that is not reflected in the gaming machine pay table (e.g., double jackpot);

**C.** "affiliate" means a corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation;

**D.** "allocate" means the transfer of an allocating racetrack's right to operate a number of its authorized gaming machines to the receiving racetrack;

**E.** "allocation agreement" means a written contract between an allocating racetrack and a receiving racetrack;

**F.** "allocating racetrack" means a racetrack gaming operator licensee that has allocated or is proposing to allocate a number of its authorized gaming machines to a receiving racetrack pursuant to a valid allocation agreement;

**G.** "allowable gaming expenses" means the following bona fide expenses in reasonable and customary amounts: (a) purchase prices of non-cash prizes; (b) security and surveillance expenses; (c) independent accountant's fees; (d) license fees, including renewals and gaming machine license fees; (e) utilities attributable to the licensed premises; (f) installment payments to an independent administrator or lease payments for licensed gaming machines; (g) gaming device repair and maintenance; (h) gaming employee salaries and employment taxes; (i) gaming supplies; (j) approved management fees; and (k) licensed premises repair and maintenance;

**H.** "balance of net take" means the amount of net take remaining after the gaming operator licensee pays the gaming tax, income and other applicable taxes, and allowable gaming expenses as set forth in this rule;

**I.** "charitable purposes" means activities that promote, directly or indirectly, the well-being of the public at large or the benefit of an indefinite number of persons in the state; the term "charitable purposes" does not include operating expenses of the organization;

**J.** "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the licensee;

**[K] K.** "credit slip" means a cash-out ticket for winnings earned on a gaming machine that provides for credit play;

**L.** "disciplinary action" means an action by the board that limits, conditions, suspends or revokes a license, registration, finding of suitability or prior approval issued by the board, or an assessment of a fine by the board, or any combination of the foregoing;

**[M] M.** "educational purposes" means activities or uses that develop the capabilities of individuals by formal instruction;

**[N] N.** "gaming credit" means an accumulation of awards on a gaming machine display screen rather than from the dispensing of winnings from a hopper; one gaming credit equals the denomination of the game being played;

**[O] O.** "independent administrator" means (a) a bank licensed by the state of New Mexico or a national bank with an office in New Mexico; or (b) an insurance company admitted to transact business in New Mexico with a best insurance rating of "A," "A+" or "A-"; and (c) one that is not an affiliate of the gaming operator licensee;

**[P] P.** "receiving racetrack" means a racetrack gaming operator licensee that is proposing to receive, or has received pursuant to a valid allocation agreement, allocated gaming machines from an allocating racetrack;

**[Q] Q.** "management contractor" means any person that has entered into a management contract with a gaming operator licensee; a management contractor may not be an affiliate of the licensee;

**[R] R.** "nonprofit operator licensee" means a qualified nonprofit organization that has obtained a gaming operator's license pursuant to the provisions of the act and board regulations;

**[S] S.** "periodic payments" means a series of payments that are paid at least annually and includes annuities;

**[T] T.** "person" means a legal entity or individual;

**[U] U.** "personal property award" means an award of personal property based on gaming machine play;

**[V] V.** "promotion" means a short-term program designed to stimulate participation in gaming activities by patrons through advertising and the award of cash and non-cash prizes, not based on a jackpot; "promotion" includes the gift of nominal value items, such as T-shirts and mugs; and includes player's clubs or similar programs in which gaming patrons accumulate points, which can be exchanged for cash, machine credits, merchandise or any other thing of value;

**[W] W.** "state" means the state of New Mexico;

**[X] X.** "this title" means Title 15, Chapter 1 of the state administrative code;

**[Y] Y.** "trust" means an irrev-

ocable fiduciary relationship in which one person is the holder of the title to property subject to an equitable obligation to keep or use the property for the benefit of another. [12/31/98; 15.1.10.7 NMAC - Rn & A, 15 NMAC 1.10.7, 3/31/00; A, 04/30/02; A 5/14/04; A, 5/15/07; A, 6/30/08]

#### 15.1.10.8 METHODS OF OPERATION:

**A.** All gaming establishments shall be operated in a manner suitable to protect the health, safety, morals, and general welfare of the public.

**B.** It is the responsibility of the licensee to employ and maintain suitable methods of operation consistent with state policy. ~~[Willful or persistent use of methods of operation deemed unsuitable, or failure of the licensee to use suitable methods, shall constitute grounds for revocation of the license and imposition of a fine or other disciplinary action by the board.]~~ [12/31/98; 15.1.10.8 NMAC - Rn, 15 NMAC 1.10.8, 3/31/00; A, 2/28/05; A, 6/30/08]

#### 15.1.10.9 UNSUITABLE METHODS OF OPERATION:

Any activity by any licensee or its agents or employees that is contrary to the health, safety, morals, or welfare of the public, ~~[is]~~ shall be deemed an unsuitable method of operation. Without limitation, ~~[and in addition to any other specific methods of operation or conduct identified in this title as unsuitable,]~~ the following shall be determined to be unsuitable methods of operation:

**A.** failing to exercise discretion and sound judgment in the operation of the activity authorized under the license;

**B.** permitting persons who are obviously intoxicated to participate in gaming;

**C.** serving or allowing possession of alcoholic beverages by any person on the licensed premises of a race-track gaming operator licensee;

**D.** directly or indirectly assisting, employing, or associating with persons or businesses of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

**E.** employing as a key executive any person who has been denied a gaming license, work permit, ~~[or]~~ finding of suitability in any jurisdiction, or who has failed or refused to apply for such permit or finding, or who has failed or refused to apply for renewal or recertification;

**F.** failing to comply with all federal, state and local laws and regulations governing the operations of a gaming establishment, including without limitation

the payment of all fees and taxes;

**G.** possessing or permitting the operation of any unlicensed gaming machine, gaming device, or other unauthorized device on the gaming establishment;

**H.** conducting, operating, or dealing with any cheating game or device on the gaming establishment, knowingly or unknowingly, that alters or tends to alter the normal random selection of criteria that determine the results of the game;

**I.** except as otherwise provided in this rule, selling, transferring or otherwise assigning interest in the license or revenues from the license;

**J.** denying the board or its agents or other authorized persons access to a gaming establishment or records, wherever located, as authorized by the act and rules adopted by the board;

**K.** a nonprofit operator licensee knowingly or unknowingly permitting persons other than members or auxiliary members to participate in gaming on the licensed premises;

**L.** employment of, association with, or participation in any enterprise or business with a documented or identifiable organized crime group or recognized organized crime figure;

**M.** misrepresentation of any material fact or information to the board;

**N.** engaging in, furthering, or profiting from any illegal activity or practice or any violation of the act or this title;

**O.** obstructing or impeding the activities of the board or its employees or agents;

**P.** facilitating, participating in, or allowing the issuance of any loans or extending credit to a patron for gaming purposes;

**Q.** conducting or permitting the conduct, knowingly or unknowingly, of any gaming activity other than that allowed pursuant to the license;

**R.** cashing or permitting the cashing of governmental assistance checks, including welfare checks, social security checks, and child support payments;

**S.** failing to follow, or to ensure that employees follow, the minimum internal controls established by regulation or failure to notify the board of any changes to the minimum internal controls;

**T.** failing to require employees to wear work permits or key executive identification as required in this title;

**U.** employment of, contracting with, associating with, or participating in any enterprise or business that has failed to obtain a license as required by the

act;

**V.** failing to adhere to the compulsive gambling guidelines or plan; ~~[and]~~

**W.** failing to comply with any subpoena or other order of the board;

**X.** except on the basis of a properly invoked privilege against self-incrimination, failing or refusing to testify in any proceeding before the board or before an administrative hearing officer appointed by the board;

**Y.** permitting a person under the age of 21 years to enter onto the gaming premises;

~~[W]~~ **Z.** otherwise failing to conduct gaming operations in accordance with the act or this title.

[12/31/98; 15.1.10.9 NMAC - Rn & A, 15 NMAC 1.10.9, 3/31/00; A, 12/28/01; A, 5/14/04; A, 2/28/05; A, 5/15/07; A, 6/30/08]

#### 15.1.10.19 PUBLICATION OF PAYOFFS:

~~[A]~~ Payoff schedules applicable to every licensed gaming machine shall be displayed at all times on the machine or in a conspicuous place immediately adjacent to it. Payoff schedules shall accurately state actual payoffs applicable to the particular machine and shall not be worded in a manner that misleads or deceives the public.

~~[B. Presentation of any misleading or deceptive matter on a payoff schedule or failure to make payment in strict accordance with posted payoff schedules is an unsuitable method of operation.]~~

[12/31/98; 15.1.10.19 NMAC - Rn, 15 NMAC 1.10.19, 3/31/00; A, 2/28/05; A, 6/30/08]

#### 15.1.10.21 DETERMINATION AND POSTING OF ODDS:

**A.** The gaming operator licensee shall post the odds of winning in a conspicuous place on the face of each gaming machine or in a conspicuous place immediately adjacent to the gaming machine. ~~[Failure to post odds for any gaming machine shall subject the licensee to disciplinary action.]~~

(1) The odds shall be posted in a manner which is clearly legible.

(2) If the odds are posted adjacent to the gaming machine, the posting shall clearly identify the gaming machine to which it applies.

**B.** The odds to be posted on a gaming machine shall be the odds of any player achieving a winning outcome from the games available on that gaming machine. For example, if the odds are that a player will win something from the particular gaming machine 20% of the time, a notice containing the words "The odds of winning are 1 in 5" should be posted as required in this section.

[12/31/98; 15.1.10.21 NMAC - Rn, 15 NMAC 1.10.21, 3/31/00; A, 5/14/04; A, 2/28/05; A, 6/30/08]

#### 15.1.10.22 SECURITY:

**A.** Gaming operator licensees shall implement and maintain security measures that shall ensure safe and honest operation of the gaming establishment.

**B.** Security personnel shall possess and maintain valid work permit cards at all times while on duty.

**C.** A sufficient number of security personnel shall be on duty and in appropriate areas to ensure that gaming activities are conducted safely, honestly, and in compliance with the law. If the board determines at any time that security measures are inadequate, the board may require that the licensee provide additional security measures to the board's satisfaction. ~~[Failure to maintain adequate security measures is an unsuitable method of operation.]~~

[12/31/98; 15.1.10.22 NMAC - Rn, 15 NMAC 1.10.22, 3/31/00; A, 12/28/01; A, 5/14/04; A, 2/28/05; A, 6/30/08]

#### 15.1.10.23 SURVEILLANCE SYSTEMS:

**A.** Each gaming operator licensee shall install, maintain and continuously operate a surveillance system at its licensed gaming establishment. The purpose of the surveillance system is to assist the gaming operator licensee and the state in safeguarding the licensee's assets, in deterring, detecting and prosecuting criminal acts, and in maintaining public confidence and trust that licensed gaming activity is conducted honestly and free of criminal elements and activity.

**B.** The board, in its sole discretion, may exempt a gaming operator licensee from the requirements of this section. ~~[Unless exempted, failure of the licensee to install, maintain and continuously operate an adequate surveillance system, as determined by the board, constitutes an unsuitable method of operation.]~~

**C.** Within 60 days after filing its application, each applicant for a gaming operator's license shall submit a written surveillance system plan to the board. The plan shall be in a form approved or required by the board and shall include descriptions of all equipment utilized by the surveillance system, a blueprint or diagram that shows all of the areas to be monitored and the placement of surveillance equipment in relation to the activities being observed, a description of the procedures used in the operation of the surveillance system, and any other information required by the board. The plan shall be approved before a gaming operator license is issued.

**D.** Before implementing any changes to a surveillance system plan, the licensee shall submit the proposed changes to the board for approval. If, after reviewing the gaming operator licensee's proposed changes, the board determines that the proposed plan is not adequate, the board shall notify the gaming operator licensee in writing. The gaming operator licensee shall revise the proposed plan and submit it to the board for approval or request a hearing within 30 days after receipt of the board's written notice.

~~[Failure to submit a revised plan for board approval constitutes an unsuitable method of operation, unless a hearing has been requested in accordance with this subsection.]~~

**E.** A licensee shall notify the board immediately of any failure of the surveillance system to continuously monitor the gaming premises or to otherwise operate properly. The board may require temporary suspension of gaming activities until the surveillance system is restored.

**F.** A racetrack licensed after September 1, 2003, shall provide at least one entrance to the surveillance room that is not located on the game room floor. Any racetrack gaming operator licensee who substantially remodels the gaming premises shall provide at least one entrance to the surveillance room that is not on the gaming room floor.

[12/31/98; 15.1.10.23 NMAC - Rn, 15 NMAC 1.10.23, 3/31/00; A, 12/28/01; A, 5/14/04; A, 6/30/08]

#### 15.1.10.25 PAYMENT OF WINNINGS:

**A.** No gaming machine offered for play by a nonprofit operator licensee shall award a prize that exceeds \$4,000. Nonprofit operator licensees shall not offer periodic payments of cash or non-cash winnings and shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

**B.** Except as otherwise provided in this ~~[rule]~~ title, a racetrack gaming operator licensee shall remit the total winnings and non-cash prizes awarded to a patron as the result of any licensed game upon validation of the win.

~~[C. Nonpayment of winnings and non-cash prizes awarded shall subject the gaming operator licensee to disciplinary action, including suspension or revocation of the license, imposition of a fine, or both, if nonpayment is due to:~~

~~(1) the gaming operator licensee's failure or refusal to maintain minimum bankroll requirements established in this title;~~

~~(2) the gaming operator licensee's failure or refusal to fund or maintain annu-~~

~~ities as required by this title;~~

~~(3) the gaming operator licensee's failure or refusal to pay winnings after the board has issued a final order in a patron dispute, unless an appeal of the board's order is pending and enforcement of the order has been stayed by the board or a court of competent jurisdiction;~~

~~(4) use of unfair, deceitful, or illegal practice by the gaming operator licensee, its agent, or employee; or~~

~~(5) any other reason deemed appropriate by the board.]~~

~~[D] C.~~ If a gaming operator licensee uses ticket-in/ticket out technology, a patron shall be required to personally present the ticket for redemption at the licensee's premises. A licensee shall not redeem tickets by mail or by any common carrier.

[12/31/98; 15.1.10.25 NMAC - Rn, 15 NMAC 1.10.25, 3/31/00; A, 12/28/01; A, 2/28/05; A, 5/15/07; A, 6/30/08]

#### 15.1.10.30 INFORMATION TO BE PROVIDED BY LICENSEES:

**A.** Every licensee shall report to the board, on a quarterly basis, the full name and address of every person, including lending agencies, who has any right, direct or indirect, to share in the profits of such licensed gaming activities, or to whom any interest or share in the profits of a licensed gaming activity has been pledged as security for a debt or deposited as a security for the performance of any act or to secure the performance of a contract or sale. Such report shall be submitted concurrently with an application for renewal of the license.

**B.** Every gaming operator licensee shall report to the board, within 10 days of the date of the event, the name, date of birth, and social security number of any person who acquires the right or ability to control the licensee. ~~["Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the licensee or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the licensee.]~~

**C.** Every licensee shall report to the board in writing any change in key executive personnel. The report shall be made no later than 30 days after the change.

**D.** A company licensee, other than a publicly traded corporation, shall obtain the board's prior approval before issuing or transferring 5% or more of its securities to any person. Any company licensee seeking approval shall file a report of the proposed action and request the board's approval. The licensee shall sup-

plement the report with any additional information the board determines is reasonably necessary to its decision to approve or disapprove the proposed action. The request shall be deemed filed upon receipt of such information for purposes of the 90-day period set forth in Section 60-2E-25(A) of the act.

**E.** Any person licensed by the board, including employees with work permits, and any affiliate, shall notify the board in writing of any criminal conviction and criminal charge pending against such person within 10 days of such person's arrest, summons, or conviction. Notice is not required for any non-felony traffic violation unless the violation results in suspension or revocation of a driver's license or is based on allegations of driving under the influence of intoxicating liquor or drugs. ~~[Failure to give proper notice to the board may be grounds for disciplinary action.]~~

**F.** Each licensee shall report any discovered or suspected plan, scheme, device or other methods of cheating that may compromise the integrity of any gaming device sold or offered for sale, offered for play, or used for any other gaming purpose within the state by such licensee. The report shall be in writing and shall be submitted not later than seven days after discovery of the plan, scheme, device or other method of cheating. The subject matter and reports of the investigation conducted under this subsection shall be considered confidential except that the board may, in its sole discretion, take whatever steps it deems necessary or appropriate to address or mitigate the cheating problem, including distributing a warning about the cheating problem to other state licensees or other licensing jurisdictions.

**G.** An individual who is the holder of a work permit or certification of finding of suitability shall notify the board in writing of any change in address or gaming employment within 15 days of the change. Refusal or failure to notify the board of any change in address shall be grounds for disciplinary action. ~~[Refusal or failure to obtain a new work permit or certification of finding of suitability upon change in gaming employment shall be grounds for disciplinary action.]~~

**H.** Every licensee will report and provide all civil complaints of which they are a party and any supporting documentation deemed necessary by the board.

[12/31/98; 15.1.10.30 NMAC - Rn, 15 NMAC 1.10.30, 3/31/00; A, 12/28/01; A, 2/28/05; A, 6/30/08]

#### 15.1.10.36 POSSESSION AND VERIFICATION OF WORK PERMITS AND KEY EXECUTIVE IDENTIFICA-

**TION:** ~~[A.]~~ Every gaming employee and key executive must wear his or her valid work permit or key executive identification where easily visible at all times when engaged in the conduct of gaming activities. A work permit or key executive identification is not valid if it does not include the board-issued license number under which the work permit or identification was issued.

~~[B. Refusal or failure to wear the work permit or key executive identification as required in this rule shall be grounds for disciplinary action.]~~

[12/31/98; 15.1.10.36 NMAC - Rn, 15 NMAC 1.10.36, 3/31/00; A, 12/28/01; A, 2/28/05; A, 6/30/08]

#### 15.1.10.43 CESSATION OF GAMING ACTIVITIES; SURRENDER AND CANCELLATION OF LICENSE:

**A.** Any gaming operator licensee that ceases gaming activities for more than seven consecutive days and has not requested and received authorization from the board under Subsection B of 15.1.10.43 NMAC, shall surrender its gaming operator's license to the board within 10 days of ceasing those activities. The board shall cancel the gaming operator's license as of the date gaming activities ceased, and no further gaming activities by the gaming operator's licensee shall be permitted. Cancellation of a gaming operator's license does not constitute revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. The gaming operator's licensee shall submit a new application and obtain a new gaming operator's license before resuming gaming activities.

**B.** Upon written request, the board may authorize a gaming operator licensee to temporarily cease gaming activities. A gaming operator licensee who is authorized by the board to temporarily cease gaming activities shall notify the board of its intent to resume gaming activities but shall not resume such activities until approved by the board.

**C.** If a gaming operator licensee wishes to cease gaming activities indefinitely, with no intent to resume gaming activities, the gaming operator licensee:

(1) shall notify the board of its intentions to cease gaming activities indefinitely;

(2) shall submit to a final audit by the board to insure that all taxes, charitable payments and outstanding obligations of the gaming operation have been paid;

(3) shall ensure that all gaming machines are removed from the premises in a manner that complies with the Gaming Control Act and board rules;

(4) shall comply with any other

requirements imposed by the board.

(5) shall physically surrender the gaming operator's license and all gaming badges.

**D.** If a gaming operator licensee complies with the requirements of Subsection C of 15.1.10.43 NMAC, the board shall cancel the gaming operator's license. Cancellation of the gaming operator's license shall not constitute a revocation, permanent suspension, or other limiting action of the gaming operator's license by the board. Failure to comply with the provisions of Subsection C of 15.1.10.43 NMAC shall be grounds for revocation of the gaming operator's license. The board may take action to revoke the gaming operator's license notwithstanding the fact that the gaming operator licensee has ceased gaming activities.

**E.** The ceasing of gaming activities does not relieve the gaming operator licensee or former gaming operator licensee of its obligations to pay any tax, fee or cost due or to submit any report or information required as a result of engaging in gaming activities.

~~[F. The board may take disciplinary action against any gaming operator licensee that ceases gaming activities without notice to the board, including revoking the gaming operator's license, imposing a fine, or both.]~~

[15.1.10.43 NMAC - N, 12/28/01; A, 2/28/05; A, 6/30/08]

## NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.11 NMAC, Section 14 effective June 30, 2008.

#### 15.1.11.14 DUTY OF LICENSEE TO EXCLUDE:

**A.** The excluded person ~~is to~~ shall be excluded from the area of the gaming establishment designated as the licensed premises.

**B.** Whenever an excluded person enters, attempts to enter, or is on the licensed premises, and the licensee or its agent or a gaming employee knows or has reason to know that the person is an excluded person, the licensee or its agents or employees ~~must~~ shall do the following:

(1) immediately notify the board of the excluded person's presence in the gaming establishment;

(2) ask the person to not enter the licensed premises, or if on the licensed premises, to immediately leave; and

(3) notify the state department of public safety or the appropriate local law enforcement agency and the board if the excluded person fails to comply with such

request.

C. The duty to exclude requires that each gaming operator licensee does the following:

(1) ensures that the gaming operator licensee and its agents and gaming employees have reviewed and are familiar with the excluded persons list as developed and updated by the board;

(2) adequately trains its agents and employees as to the requirements of this rule; and

(3) develops and maintains appropriate security measures to minimize the risk that an excluded person will enter or remain on the licensed premises.

~~[D. Failure to request any excluded person to leave or to prohibit entry of such person upon the licensed premises in a timely fashion, or failure to otherwise comply with any of the requirements of this section constitutes an unsuitable method of operation.]~~

[E] D. As used in this section, “knows or has reason to know” means the gaming operator licensee, agent, or employee:

(1) has actual knowledge of the fact that the person is an excluded person; or

(2) would have obtained that knowledge had the person complied with the duties set forth in this section.

[N, 12/31/98; 15.1.11.14 NMAC - Rn, 15 NMAC 1.11.14, 2/14/02; A, 6/30/08]

### NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.14 NMAC, Sections 7 and 13 effective June 30, 2008.

15.1.14.7 DEFINITIONS: Unless otherwise defined below, terms used in this rule have the same meanings as set forth in the Gaming Control Act.

A. “Act” means the Gaming Control Act.

~~[B. “Disciplinary action” means an action by the board that limits, conditions, suspends or revokes a license, registration, finding of suitability or prior approval issued by the board, or an assessment of a fine by the board, or any combination of the foregoing.]~~

[C] B. “Party” means each person named or admitted as a party to a proceeding before the board or duly appointed hearing examiner.

[D] C. “Person” means a legal entity or individual.

[E] D. “Petitioner” means the board or the board’s representative.

[F] E. “Respondent” means a licensee or person to which an approval has been granted and who is the subject of a

complaint issued by the board.

[G] E. “State” means the state of New Mexico.

[12/31/98; 15.1.14.7 NMAC - Rn, 15 NMAC 1.14.7 5/31/00; A, 5/14/04; A, 6/30/08]

### 15.1.14.13 FAILURE OR REFUSAL TO TESTIFY:

A. If a respondent fails to testify in its own behalf or asserts a claim of privilege with respect to any question presented to the respondent, the hearing examiner may infer from such refusal that the testimony or answer would have been adverse in the respondent’s case.

B. If any affiliate, holding company, employee, or agent of a respondent fails to respond to a subpoena or asserts a claim of privilege with respect to any question presented, the hearing examiner, after considering all of the circumstances, may infer that such testimony would have been adverse to the respondent.

~~[C. If on a ground other than a properly invoked privilege against self-incrimination a respondent fails to respond to a subpoena or fails or refuses to answer a material question, the board may deem such failure or refusal to be independent grounds for taking disciplinary action against the respondent.]~~

[12/31/98; 15.1.14.13 NMAC - Rn, 15 NMAC 1.14.13, 5/31/00; A, 6/30/08]

### NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.19 NMAC, Section 8 effective June 30, 2008.

### 15.1.19.8 PAYOUT RESTRICTIONS:

~~[A.]~~ [No] A gaming operator licensee ~~[may]~~ shall not pay winnings in excess of \$1,200.00 to any winning patron without following the procedures set forth in this rule.

~~[B. Failure to comply with the procedures set forth in this rule may result in disciplinary action against the gaming operator licensee, including suspension or revocation of the gaming operator license, imposition of fines, or both.]~~

[4/30/99; 15.1.19.8 NMAC - Rn, 15 NMAC 1.19.8, 10/15/00; A, 7/31/02; A, 6/30/08]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.1 NMAC, Section 7, effective July 1, 2008.

8.305.1.7 DEFINITIONS: The state of New Mexico is committed to improving the health status of New Mexico residents whose health care services are funded by the Title XIX (medicaid) program. As a means of improving health status, a capitated managed care plan has been implemented. This section contains the glossary for the New Mexico medicaid managed care 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 medicaid, or the interagency behavioral health purchasing collaborative (the collaborative), 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 client or member practices that result in unnecessary costs to medicaid or the collaborative.

(2) **Action:** 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.

(3) **Appeal, member:** A request from a member or provider, on the member’s behalf with the member’s written permission, for review by the managed care organization (MCO) or the single statewide entity (SE) for behavioral health of an MCO or SE action as defined above in Paragraph (2) of Subsection A of 8.305.1.7 NMAC.

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

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

(6) **Assignment algorithm:** Predetermined method for assigning mandatory enrollees who do not select an MCO.

B. Definitions beginning

with letter "B":

(1) **Behavioral health:** Refers to mental health and substance abuse.

(2) **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 behavioral health service delivery in New Mexico. The SE will be expected to interact with the BHPC as an advisory council.

(3) **Behavioral health purchasing collaborative:** Refers to the inter-agency 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 eight agencies that provide and fund direct services, including the human services department.

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

C. Definitions beginning with letter "C":

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

(2) **Care coordination for behavioral health:** An office-based administrative function to assist members with multiple, complex and special cognitive, behavioral or physical health care needs on an as needed basis. It is member-centered and consumer-directed, family-focused when appropriate, culturally competent and strengths-based. Care coordination ensures that medical and behavioral health needs are identified and services are provided and coordinated with the member and family, if appropriate. Care coordination operates independently within the SE and has separately defined functions with a dedicated care coordination staff, but is structurally linked to other SE systems, such as quality assurance, member services and grievance. Clinical decisions shall be based on the medically necessary covered services and not fiscal or administrative considerations. The care coordinator coordinates services within the behavioral health delivery system, as well as with other service providing systems. The care coordinator may interface and collaborate with the consumer'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 lies with the condition that is most acute.

(3) **Care coordination for physical health:** An office-based administrative function to assist members with multiple, complex and special cognitive, behavioral or physical health care needs on an as needed basis. It is member-centered and consumer-directed, family-focused when appropriate, culturally competent and strengths-based. Care coordination ensures that medical and behavioral health needs are identified and services are provided and coordinated with the member and family if appropriate. Care coordination operates independently within the MCO and has separately defined functions with a dedicated care coordination staff, but is structurally linked to other MCO systems, such as quality assurance, member services and grievance. Clinical decisions shall be based on the medically necessary covered services and not fiscal or administrative 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 lies with the condition that is most acute.

(4) **Care coordination plan/individual plan of care (SE only):** The care coordination plan is based on a comprehensive assessment of the goals, capacities and the behavioral health service needs of the member and with consideration of the needs and goals of the family, if appropriate.

(5) **Case:** A household that Medicaid treats as a unit for purposes of eligibility determination; for example, a parent and child; a legal guardian and child; or a set of siblings.

~~(6) **Case management for behavioral health:** A set of therapeutic services delivered primarily face to face in community settings (generally not office settings) and intended to ensure that individuals receive the services they need in a timely, appropriate, effective, efficient and coordinated fashion. Case management is designed for individuals and families who cannot otherwise access services, obtain the benefits of services, or reach their treatment and service goals without assistance. Case management is consumer centered, family consumer focused when appropriate, culturally competent and strength based. Providers are encouraged to offer this service in the communities that they serve.~~

(7) **(6) Case management for physical health:** The targeted case management programs, that are part of the Medicaid benefit package. The targeted case management programs will continue to be

important service components. In these programs, case managers typically function independently and assess a member's/family's needs and strengths; develop a service/treatment plan, coordinate, advocate for and link members to all needed services related to the targeted case management program.

~~(8)~~ **(7) Children with special health care needs (CSHCN):** Individuals under 21 years of age, who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition, and who also require health and related services of a type or amount beyond that required by children generally.

~~(9)~~ **(8) 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. 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.

~~(10)~~ **(9) Client:** An individual who has applied for and been determined eligible for Title XIX (Medicaid). A "client" may also be referred to as a "member", "customer", or "consumer".

~~(11)~~ **(10) CMS:** Centers for Medicare and Medicaid Services.

~~(12)~~ **(11) Community-based care:** A system of care, which seeks to provide services to the greatest extent possible, in or near the member's home community.

**(12) Comprehensive community support services:** These services are goal-directed mental health rehabilitation services and supports for children, adolescents, and adults necessary to assist individuals in achieving recovery and resiliency goals. These services assist in the development and coordination of a member's service plan and include therapeutic interventions which address barriers that impede the development of skills necessary for independent functioning in the community.

(13) **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 imple-

mented improvements and modification of improvements, as indicated.

**(14) 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) home and community-based 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, AIDS and medically fragile waiver programs.

**[44] (15) Cultural competence:** 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 an MCO/SE gives another entity the authority to perform certain functions on its behalf. The MCO/SE 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 medicaid, not being on the MCO/SE formulary or due to provider noncompliance with administrative policies and procedures established by either the MCO/SE or the medical assistance division.

**(3) Denial-clinical:** A non-authorization decision at the time of an initial request for a medicaid service or a formulary exception request based on the member not meeting medical necessity for the requested service. The utilization management (UM) staff may recommend an alternative service, based on the client'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.

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

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

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

~~**(3) Enhanced service:** Any service offered to members by the MCO/SE that is not included in the managed care medicaid benefit package and is not a medicaid funded service, benefit or entitlement under the NM Public Assistance Act.~~

**(4) (3) Enrollee:** A medicaid recipient who is currently enrolled in a managed care organization in a given managed care program.

~~**(5) (4) Enrollee rights:** Rights which each managed care enrollee is guaranteed.~~

~~**(6) (5) Enrollment:** The process of enrolling eligible clients in an MCO/SE for purposes of management and coordination of health care delivery.~~

~~**(7) (6) EPSDT:** Early and periodic screening, diagnostic and treatment.~~

~~**(8) (7) Exempt:** The enrollment status of a client who is not mandated to enroll in managed care.~~

~~**(9) (8) Exemption:** Removal of a medicaid member from mandatory enroll-~~

ment in managed care and placement in the medicaid fee-for-service program. Such action is only for substantial reason, as determined by HSD on a case-by-case basis.

~~**(10) (9) Expedited appeal:** A federally mandated provision for an expedited resolution within three working days of the requested appeal, which includes an expedited review by the MCO/SE of an MCO/SE action.~~

~~**(11) (10) External quality review organization (EQRO):** An independent organization with clinical and health services expertise capable of reviewing the evidence of compliance of health care delivery and internal quality assurance/improvement requirements.~~

F. Definitions beginning with letter "F":

**(1) Family-centered care:** When a child is the patient, the system of care reflects the importance of the family or legal guardian in the way services are planned and delivered. Family-centered care facilitates collaboration between family members and medical professionals, builds on individual and family strengths and respects diversity of families.

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

**(3) Fee-for-service (FFS):** The traditional medicaid payment method whereby payment is made by HSD to a provider after services are rendered and billed.

**(4) Fraud:** An intentional deception or misrepresentation made by an entity or person, including but not limited to, an MCO/SE, subcontractor, provider or client 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.

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

G. Definitions beginning with letter "G":

**(1) Gag order:** Subcontract provisions or MCO/SE 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/SE or its business practices.

**(2) Grievance (member):** Oral or written statement by a member express-

ing dissatisfaction with any aspect of the MCO/SE or its operations that is not an MCO/SE action.

(3) **Grievance (provider):** Oral or written statement by a provider to the MCO/SE expressing dissatisfaction with any aspect of the MCO/SE or its operations that is not an MCO/SE action.

H. Definitions beginning with letter "H":

(1) **HCFA:** Health care financing administration. Effective 2001, the name was changed to centers for medicare and medicaid services (CMS).

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

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

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

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

I. Definitions beginning with letter "I":

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

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

J - L: [RESERVED]

M. Definitions beginning with letter "M":

(1) **Managed care organization (MCO):** An organization licensed to manage, coordinate and assume financial risk on a capitated basis 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/SE yellow page advertisements, and any other presentation materials used by an MCO/SE, MCO/SE representative, or MCO/SE subcontractor to attract or retain medicaid enrollment.

(3) **MCO/SE:** The use of MCO/SE in these medicaid managed care regulations indicates the following regulation applies to both the MCO and the SE who must each comply with the regulation independent of each other.

(4) **MCO/SE mandatory enrollee:** A client whose enrollment into an MCO/SE is mandated.

(5) **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.

(6) **Medical/clinical home:** A conceptual model that facilitates the provision of quality care that is accessible, family-centered, continuous, coordinated, compassionate and culturally competent.

(7) **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 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, mental 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 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 pre-

vious 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; and

(iv) decisions regarding benefit coverage for children shall be governed by the EPSDT coverage rules.

(8) **Member:** A client enrolled in an MCO/SE.

(9) **Member month:** A calendar month during which a member is enrolled in an MCO/SE.

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/SE to furnish medical or behavioral health services to the MCO's/SE's members under the provisions of the medicaid managed care contract.

O. [RESERVED]

P. Definitions beginning with letter "P":

(1) **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/SE to pend approval does not extend or modify required utilization management decision timelines.

(2) **Performance improvement project (PIP):** An MCO/SE QM program activity must include projects that are designed to achieve significant improvement in clinical or non-clinical care areas. PIPs must involve measurements using objective quality indicators, system intervention to achieve improvement, evaluation of the effectiveness of interventions and activities for increasing or sustaining improvement. Outcomes must be measurable over a period of time.

(3) **Performance measurement**



**(PM):** Data specified by the state that enables the MCO/SE's performance to be determined.

(4) **Plan of care:** A written document including all medically necessary services to be provided by the MCO/SE 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] MCO/SE.

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

(8) **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.

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

(10) **Primary care case management (PCCM):** A medical care model in which clients are assigned to a primary care provider who is responsible for managing the quality, appropriateness, and efficiency of the care they receive. The primary care provider is responsible for furnishing case management services to medicaid eligible recipients that include the location, coordination, and monitoring of primary health care services and the appropriate referral to specialty care services.

(11) **Primary care case manager:** A physician, a physician group practice, an entity that medicaid-eligible recipients employ or arrange with physicians to furnish primary care case management services or, at state option, any of the following:

- (a) a physician assistant;
- (b) a nurse practitioner; or
- (c) a certified nurse mid-wife.

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

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

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/SE but not paid affecting appropriate expense

and aging accounting categories. Such claims are counted as of the date of receipt by the MCO/SE.

(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 than were originally requested. The authorization is based on the client's physical health (medical needs) or behavioral health (clinical needs).

(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/SE to minimize exposure to losses incurred when members utilize health care services beyond anticipated levels or overall member utilization is greater than expected.

(6) **Risk:** The possibility that revenues of the MCO/SE 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) **Single statewide entity (SE):** The entity selected by the state of New Mexico through the behavioral health 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 administer both the medicaid managed care and medicaid fee-for-service (FFS) programs for all medicaid behavioral health services. The SE shall 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.

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

(3) **Subcontractor:** A third party

who contracts with the MCO/SE or an MCO/SE 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.

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

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 letter "V": **Value added service:** Any service offered to members by the MCO/SE that is not included in the managed care medicaid benefit package and is not a medicaid funded service, benefit or entitlement under the NM Public Assistance Act. [8.305.1.7 NMAC - Rp 8.305.1.7 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.3 NMAC, Sections 10 and 11, effective July 1, 2008.

**8.305.3.10 CONTRACT MANAGEMENT:** HSD is responsible for management of the medicaid contracts issued to MCOs/SE. HSD shall provide the oversight and administrative functions to ensure MCO compliance with the terms of the medicaid contract. The collaborative or its designee shall provide the oversight and administrative functions to ensure SE compliance with the terms of its contract. HSD, as a member of the collaborative, shall provide oversight of the SE contract as it relates to medicaid behavioral health services, providers and members.

A. **General contract requirements:** The MCO/SE shall meet all specified terms of the medicaid contract with HSD and the collaborative as it relates to medicaid members and services 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/SE shall be held harmless in conversion to HIPAA electronic transmission formats when delays are the result of implementation issues at HSD.

**B. Subcontracting requirements:** The MCO/SE may subcontract to a qualified individual or organization the provision of any service defined in the benefit package or other required MCO/SE functions. The MCO/SE shall submit boilerplate contract language and sample contracts for various types of subcontracts. Any substantive changes to contract templates shall be approved by HSD or the collaborative prior to issuance. The SE may assign, transfer, or delegate to a subcontractor key management functions including, but not limited to, care coordination and universal credentialing with the explicit written approval of HSD and the collaborative.

(1) **Credentialing requirements:** The MCO/SE shall maintain policies and procedures for verifying that the credentials of its providers and subcontractors meet applicable standards. The MCO/SE shall assure the prospective subcontractor's ability to perform the activities to be delegated.

(2) **Review requirements:** The MCO/SE shall maintain a fully executed original of all subcontracts and make them accessible to HSD on request.

(3) **Minimum requirements (MCO/SE):**

(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 to operation in the state of New Mexico;

(c) subcontracts shall include procedures and criteria for terminating the subcontract;

(d) subcontracts shall identify the services to be performed by the subcontractor and the services to be performed under other subcontracts; subcontracts must describe how 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 10 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 include a

provision for the subcontractor to release to the MCO/SE any information necessary to perform any of its obligations;

(j) subcontractors shall accept payment from the MCO/SE for any services included in the benefit package and cannot request payment from HSD for services performed under the subcontract;

(k) if subcontracts include primary care, provisions for compliance with PCP requirements delineated in the MCO contract with HSD apply;

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

(m) subcontracts shall have a provision for terminating, rescinding, or canceling the contracts for violation of applicable HSD requirements;

(n) subcontracts shall not prohibit a provider or other subcontractor from entering into a contractual relationship with another MCO (MCO only);

(o) subcontracts may not include incentives or disincentives that encourage a provider or other subcontractor not to enter into a contractual relationship with another MCO (MCO only);

(p) subcontracts shall not contain any gag order provisions nor sanctions against providers who assist members in accessing the grievance process or otherwise protecting member's interests;

(q) subcontracts shall specify the time frame for submission of encounter data to the MCO/SE; ~~and~~

(r) 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

(s) subcontracts shall include a provision requiring subcontractors to perform criminal background checks, as required by law, for all individuals providing services.

(4) **Excluded providers:** The MCO/SE shall not contract with an individual provider, or an entity, or an entity with an individual who is an officer, director, agent, or manager who owns or has a controlling interest in the entity, who has been convicted of crimes specified in Section 1128 of the Social Security Act, excluded from participation in any other state's medicaid program, medicare, or any other public or private health or health insurance program, assessed a civil penalty under the provision of Section 1128, or who has a contractual relationship with an entity convicted of a crime specified in Section 1128.

**C. Provider incentive plans:** The MCO/SE shall ensure that direct or indirect incentives offered in the

subcontract shall not serve as an inducement to reduce or limit medically necessary services to members.

[8.305.3.10 NMAC - Rp 8.305.3.10 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07; A, 7-1-08]

### 8.305.3.11 ORGANIZATIONAL REQUIREMENTS:

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

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

(2) articles of incorporation, bylaws, partnership agreements, or similar documents that describe the MCO's/SE'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/SE's relationship to parent affiliated and related business entities including, but not limited to, subsidiaries, joint ventures or sister corporations.

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

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

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

(3) **Business requirements:** The MCO/SE shall have the administrative, information and other systems in place necessary to fulfill the terms of the medicaid

managed care contracts. Any change in identified key MCO/SE personnel shall conform to the requirements of the managed care contract. The MCO/SE shall retain financial records, supporting documents, statistical records, and all other records for a period of 10 years from the date of submission of the final expenditure report, except as otherwise specified in writing by HSD.

**(4) Financial requirements:**

The MCO/SE shall meet minimum requirements delineated by federal and state law with respect to solvency and performance guarantees for the duration of the contract. In addition, the MCO/SE shall meet additional financial requirements specified in the contract.

**(5) Member services:** The MCO/SE 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/SE'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 MCOs and the SE shall establish their respective consumer advisory board that includes regional representation of consumers, family members, advocates and providers. The SE's behavioral health consumer advisory board shall also interact with the behavioral health planning council (BHPC) as directed by the collaborative. The MCO and the SE consumer advisory boards shall interface and collaborate with one another as appropriate.

(a) The MCO 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 medicaid, including managed care. The SE consumer advisory board members shall serve to advise the SE 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 medicaid, including managed care. The MCO and the SE board shall meet at least quarterly and keep a written record of meetings. The board roster and minutes shall be made available to HSD on request. The MCO shall advise HSD ~~ten~~ 10 days in advance of meetings to be held. HSD shall attend and observe the MCOs' consumer advisory board meetings at their discretion. HSD shall attend and observe the SE's consumer advisory board meetings at its discre-

tion.

(b) The [MCO/SE] SE shall attend at least two statewide consumer driven or hosted meetings per year, of the [MCO's/SE's] SE's choosing, that focus on consumer issues and needs, to ensure that members' concerns are heard and addressed. The MCO will hold at least two additional statewide consumer advisory board meetings each contract year that focus on consumer issues to help ensure that consumer issues and concerns are heard and addressed. Attendance rosters and minutes for these two statewide meetings shall be made available to HSD.

**(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 monetary penalties or sanctions to the extent authorized by federal or state law:

(i) HSD retains the right to apply progressively stricter sanctions against the MCO/SE, including an assessment of a monetary penalty against the MCO/SE, for failure to perform in any contract area;

(ii) unless otherwise required by law, the level of sanctions shall be based on the frequency or pattern of conduct, or the severity or degree of harm posed to or incurred by members or the integrity of the medicaid program;

(iii) a monetary penalty, depending upon the severity of the infraction; penalty assessments shall range up to 5% of the MCO's/SE's medicaid capitation payment ~~in the~~ for each month in which the penalty is assessed;

(iv) any withholding of capitation payments in the form of a penalty assessment does not constitute just cause for the MCO/SE to interrupt services provided to members; and

(v) all administrative, contractual or legal remedies available to HSD shall be employed in the event that the MCO/SE violates or breaches the terms of the contract;

(d) impose other 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 member 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 under (ii) above;

(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 medicaid program; the state must deduct from the penalty the amount of overcharge and return it to the affected enrollees;

(e) adjust automatic assignment formula;

(f) rescind marketing consent;

(g) suspend new enrollment, including default enrollment after the effective date of the sanction;

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

(i) deny payment;

(j) assess actual damages;

(k) assess liquidated damages;

(l) remove members with third party coverage from enrollment with the MCO/SE;

(m) allow members to terminate enrollment;

(n) suspend agreement;

(o) terminate MCO/SE contract;

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

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

(i) there is continued egregious behavior by the MCO/SE, including but not limited to, behavior that is described in Subparagraph (d) above, or that is contrary to any requirements of 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 and safety of the MCO's/SE's members while improvement is made to remedy violations made under Subparagraph (d) above; or until there is orderly termination or reorganization of the MCO/SE;

(iv) HSD shall not delay the imposition of temporary management to provide a hearing before imposing this sanction; HSD shall not terminate temporary management until it determines that the MCO/SE can ensure that the sanction behavior will not re-occur; refer to state and federal regulations for due process proce-

dures.

[8.305.3.11 NMAC - Rp 8.305.3.11 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08]

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

This is an amendment to 8.305.4 NMAC Sections 9 and 10, effective July 1, 2008.

**8.305.4.9 MANAGED CARE**

**ELIGIBILITY:** HSD determines eligibility for enrollment in the managed care program. All medicaid eligible clients are required to participate in the medicaid managed care program except for the following:

A. clients eligible for both medicaid and medicare (dual eligibles);

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

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

D. clients participating in the health insurance premium payment (HIPP) program;

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

F. Native Americans;

G. clients eligible for medicaid category 029, family planning services only;

H. women eligible for medicaid category 052, breast and cervical cancer program, and members approved for the disabled and elderly home and community-based waiver;

I. adults ages 19-64 eligible for category 062, state coverage insurance;

J. members with brain injury COE 092; and

K. members approved for adult personal care options (PCO) services. [8.305.4.9 NMAC - Rp 8 NMAC 4.MAD.606.3.1, 7-1-01; A, 7-1-02; A, 7-1-04; A, 7-1-05; A, 7-1-08]

**8.305.4.10 SPECIAL SITUATIONS:**

A. **Newborn enrollment:** The following provisions apply to newborns:

(1) Medicaid eligible and enrolled newborns of medicaid eligible enrolled mothers are eligible for a period of 12 months starting with the month of birth.

These newborns are enrolled retroactive to the date of birth with the same MCO the mother had during the birth month, as soon as the newborn's eligibility is approved, regardless of where the child is born (that is, in the hospital or at home). The MCO is responsible for care of a newborn to a Salud! enrolled mother, whose eligibility is determined through daily rosters provided by HSD/MAD or by the MCO's required follow-up of the MAD 313 form.

(2) If the newborn's mother is not a member of the MCO at the time of the birth in a hospital or at home, the newborn must be medicaid enrolled and shall be MCO [eligible] enrolled during the next applicable enrollment cycle.

B. **Hospitalized members:** ~~[If a medicaid eligible member is hospitalized in a general acute care, a rehabilitation or free-standing psychiatric hospital either at the time the member enters managed care, disenrolls from managed care to FFS (exempt) or switches from one managed care organization to another, the MCO/SE or FFS (exempt), which was originally responsible for the hospital inpatient placement, shall remain financially responsible for the hospital related charges until discharge.]~~ If an MCO member is hospitalized at the time of disenrollment from managed care or upon an approved switch from one MCO to another, with the exception of a member transferring to CLTS, the originating MCO shall be responsible for payment of all covered inpatient facility and professional services provided within a licensed acute care facility, or a non-psychiatric specialty unit or hospitals as designated by the New Mexico department of health. The payer at the date of admission remains responsible for the services until the date of discharge. Services provided at a free-standing psychiatric hospital or within a psychiatric unit of an acute care hospital are the responsibility of the SE. Upon discharge, the member will then become the financial responsibility of the organization or entity receiving capitation payments. For members transitioning to CLTS, the originating MCO shall be responsible for payment of all covered inpatient facility and professional services up to the date of disenrollment from Salud! This does not apply to newborns born to a member mother, see Subsection A of 8.305.4.10 NMAC above.

Transition services, e.g., DME supplies for the home, shall be the financial responsibility of the MCO or the SE, if applicable to behavioral health receiving capitation payments. The originating and receiving organization are both required to ensure continuity and coordination of care during the transition.

C. **Native Americans:** A self-identified Native American shall be

afforded the option of participating in managed care or being covered by medicaid fee-for-service for medical or behavioral health services. Upon determination of medicaid eligibility, a Native American may choose to participate in managed care, or opt in, by enrolling in an MCO for medical services or by choosing the managed care SE for behavioral health services. By not enrolling in an MCO or not choosing the managed care SE, the Native American chooses not to participate in managed care and shall be covered through medicaid fee-for-service. A medicaid eligible Native American may opt-in at any time by enrolling with an MCO or by choosing the managed care SE.

If an opt-in request is made prior to the 20<sup>th</sup> of the month, the opt-in shall become effective the following month. If the opt-in request is made after the 20<sup>th</sup> of the month and before the first day of the next month, the opt-in shall be effective on the first day of the second full month following the request. After enrolling in an MCO or the managed care SE, a Native American may opt out during the first 90 days of any 12-month enrollment lock-in period (disenrollment). Disenrollment is effective the following month. At the end of the lock-in period, a Native American may choose to either continue enrollment in managed care or opt-out of managed care.

D. **Members receiving hospice services:** Members who have elected to receive hospice services and are receiving hospice services at the time they are determined eligible for medicaid will be exempt from enrolling in managed care unless they revoke their hospice election.

E. **Members placed in nursing facilities:** If a member is placed in a nursing facility for what is expected to be a long term or permanent placement, the MCO or the SE, remains responsible for the member until the member is disenrolled by HSD. Failure of a nursing facility to maintain abstract authorization for an institutionalized member that causes the system to enroll the member into managed care is considered an error in enrollment. The MCO/SE is not responsible for payment of any medical or behavioral services delivered and all capitations shall be recouped.

F. **Members in third trimester of pregnancy:** A woman in her third trimester of pregnancy at the time of enrollment, who has an established obstetrical provider may continue that relationship. Refer to Paragraph (4) of Subsection H of 8.305.11.9 NMAC for special payment requirements.

G. **Members placed in institutional care facilities for the mentally retarded (ICF/MR):** If a member is placed in an ICF/MR for what is expected to be a long-term or permanent placement, the

MCO/SE remains responsible for the member until the member is disenrolled by HSD.

H. In compliance with federal law and authorizations, HSD may mandate that a member eligible for medicaid and medicare (dual eligibles) shall be enrolled with an MCO/SE to receive benefits from the medicaid benefit package that are not provided by medicare. This program will be implemented in compliance with federal law and requirements.

[8.305.4.10 NMAC - Rp 8 NMAC 4.MAD.606.3.2, 7-1-01; A, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-07; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.5 NMAC, Section 13, effective July 1, 2008.

**8.305.5.13 MEDICAID MANAGED CARE AND SINGLE STATEWIDE ENTITY MARKETING GUIDELINES:** When marketing to medicaid members, MCOs/SE shall follow the medicaid managed care 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 must meet the following minimum requirements:

(1) marketing and outreach materials must meet requirements for all communication with medicaid members, as delineated 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/SE under the medicaid managed care 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 prevalent population of 5% in the MCO/SE membership that has limited English proficiency, as identified by the MCO/SE or HSD, marketing materials must be available in the language of the prevalent 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, MCO/SE yellow page advertisement, web site and presentation materials used by an

MCO/SE, and MCO/SE representative or MCO/SE sub-contractor to attract or retain medicaid enrollment. HSD may request, review and approve or disapprove any communication to any medicaid member. HSD may request, review and approve or disapprove any communication to any medicaid member regarding behavioral health. MCO/SE are not restricted by HSD in their general communications to the public. HSD shall approve advertisements mailed to, distributed to, or aimed at medicaid members and marketing material that mentions medicaid, medical assistance, Title XIX or makes reference to medicaid behavioral health services. The MCO/SE 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 medicaid populations, such as billboards or bus posters disproportionately located in low-income neighborhoods;

(2) mention the MCO/SE's medicaid product name; or

(3) contain language or information designed to attract medicaid enrollment.

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

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

(2) **Misleading references to MCO/SE strengths:** Misleading information shall not be allowed even if it is accurate. For example, an MCO/SE may seek to advertise that its health care services, including behavioral health, are free to medicaid members. HSD would not allow the language because it could be construed by members as being a particular advantage of the MCO/SE. In other words, they might believe they would have to pay for medicaid health services if they chose another MCO or remained in fee-for-service medicaid.

(3) **Threatening messages:** An MCO/SE shall not imply that another managed care or other behavioral health program is endangering members' health status, personal dignity or the opportunity to succeed in various aspects of their lives. An MCO/SE may differentiate itself by promoting its legitimate strengths and positive attributes, but not by creating threatening implications about the mandatory assignment process or other aspects of the program.

D. **Marketing and outreach activities not permitted:** The fol-

lowing 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/SE directly, its network providers, its sub-contractors or any other party affiliated with the MCO/SE. HSD shall prohibit additional marketing activities at its discretion.

(1) asserting or implying that a member will lose medicaid 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 health status or risk;

(3) initiating an enrollment request on behalf of a medicaid member;

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

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

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

(7) telemarketing or [~~face-to-face~~] door-to-door marketing with potential members;

(8) conducting any other marketing activity prohibited by HSD or its designee;

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

(10) distributing any marketing materials without first obtaining the approval of HSD or its designee;

(11) seeking to influence enrollment in conjunction with the sale or offering of any private insurance;

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

(13) other requirements specified by HSD;

(14) initiating an enrollment request on behalf of a medicaid recipient except under circumstances in which the MCO, its representative, network provider or subcontractor may perform presumptive eligibility screening or medicaid on site application assistance as an agent of the state.

E. **Marketing in current care sites:** Promotional materials may be made available to members and potential MCO/SE enrollees in care delivery sites, including patient waiting areas, if HSD has prior approved the content. Face-to-face meetings at care delivery sites for the pur-

pose of marketing to potential MCO/SE enrollees by MCO/SE staff shall not be permitted.

**F. Provider communications with medicaid members about MCO/SE options:** HSD marketing restrictions shall apply to MCO/SE subcontractors and providers as well as to the MCO/SE. The MCO/SE is 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/SE staff prior to enrollment:** Face-to-face meetings requested by a member are permitted. These meetings may occur at a mutually agreed upon site. All verbal interaction with the member must be in compliance with the guidelines identified in these regulations.

**H. Mailings by the MCO/SE:** MCO/SE mailings shall be permitted in response to a member's oral or written request for information. The content of marketing or promotional mailings shall be prior approved by HSD or its designee. MCO/SE may, with HSD approval, provide potential members with information regarding the MCO/SE medicaid benefit package. MCO/SE shall not send gifts however nominal in value, in these mailings. MCO/SE 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/SE 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 prior approved by HSD or its designee.

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

**J. Light refreshments for members at meetings:** The MCO/SE may offer light refreshments at approved group meetings. The availability of food and beverages shall not be mentioned in advertisements for the meetings. *Alcoholic beverages shall not be offered at meetings.*

**K. Gifts, cash incentives or rebates to members:** MCO/SE 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/SE to include reward items in information sent to new MCO/SE members.

**M. Marketing time frames:** The MCO/SE may initiate marketing and outreach activities at any time. [8.305.5.13 NMAC - Rp 8.305.5.16 NMAC, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.7 NMAC, Sections 11, 13, 14 and 15, effective July 1, 2008.

### 8.305.7.11 SERVICES INCLUDED IN THE MEDICAID BENEFIT PACKAGE:

**A. Inpatient hospital services (MCO/SE):** The benefit package includes hospital inpatient acute care, procedures and services for members, as detailed in 8.311.2 NMAC, *Hospital Services*. The MCO shall comply with the maternity length of stay in the Health Insurance Portability and Accountability Act of 1996. Coverage for a hospital stay following a normal, vaginal delivery may not be limited to less than 48 hours for both the mother and the newborn child. Health coverage for a hospital stay in connection with childbirth following a caesarian section may not be limited to less than 96 hours for mother and newborn child.

**B. Transplant services (MCO only):** The following transplants are covered in the benefit package as long as the indications are not considered experimental or investigational: heart transplants, lung transplants, heart-lung transplants, liver transplants, kidney transplants, autologous bone marrow transplants, allogeneic bone marrow transplants and corneal transplants, as detailed in 8.325.5 NMAC, *Transplant Services*. Also see 8.325.6 NMAC, *Experimental or Investigational*

*Procedures, Technologies or Non-Drug Therapies* for guidance on determining if transplants are experimental or investigational.

**C. Hospital outpatient service (MCO/SE):** The benefit package includes hospital outpatient services for preventive, diagnostic, therapeutic, rehabilitative or palliative medical or behavioral health services as detailed in 8.311.2 NMAC, *Outpatient Covered Services*.

**D. Case management services (MCO/SE) (MCO):** The benefit package includes case management services necessary to meet an identified service need as detailed in 8.326.2 NMAC through 8.326.6 NMAC and 8.320.5 NMAC.

**E. Specific case management programs:** The following are specific case management programs available to medicaid members within the MCO ~~(or the SE)~~, which meet the requirements specified in policy manual parts:

(1) **case management services for adults with developmental disabilities (MCO only):** Case management services provided to adult members (21 years of age or older) who are developmentally disabled, as detailed in 8.326.2 NMAC, *Case Management Services for Adults with Developmental Disabilities*;

(2) **case management services for pregnant women and their infants (MCO only):** Case management services provided to pregnant women up to 60 days following the end of the month of the delivery, as detailed in 8.326.3 NMAC, *Case Management Services for Pregnant Women and Their Infants*;

~~(3) case management services for the chronically mentally ill (SE only): Case management services provided to adults who are 18 years of age or older and who are chronically mentally ill, as detailed in 8.326.4 NMAC, Case Management Services for the Chronically Mentally Ill;~~

(4) (3) **case management services for traumatically brain injured adults (MCO only):** Case management services provided to adults who are 21 years of age or older who are traumatically brain injured, as detailed in 8.326.5 NMAC, *Case Management Services for Traumatically Brain Injured Adults*;

(5) (4) **case management services for children up to the age of three (MCO only):** Case management services for children up to the age of three who are medically at risk due to family conditions and not developmentally delayed, as detailed in 8.326.6 NMAC, *Case Management Services for Children Up to Age Three*; and

(6) (5) **case management services for the medically at risk (MCO/SE) (MCO only):** Case management services

for individuals who are under 21 who are medically at risk for physical or behavioral health conditions, as detailed in 8.320.5 NMAC, *EPSDT Case Management*; the benefit package does not include case management provided to developmentally disabled children ages 0-3 who are receiving early intervention services, or case management services provided by the children, youth and families department and defined as protective services case management or juvenile probation and parole officer case management; "medically at risk" is defined as those individuals who have a diagnosed physical or behavioral health condition which has a high probability of impairing their cognitive, emotional, neurological, social, behavioral or physical development.

**F. Emergency services (MCO/SE):** The benefit package includes inpatient and outpatient services meeting the definition of emergency services. It is the responsibility of the MCOs to cover emergency room facility costs even when the primary diagnosis is a behavioral health diagnosis, with the exception of UNM psychiatric emergency room, which will be the responsibility of the SE. Services shall be available 24 hours per day and 7 days per week. Services meeting the definition of emergency services shall be provided without regard to prior authorization or the provider's contractual relationship with the MCO/SE. 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 this stabilized condition. This coverage may include improving or resolving the member's condition if either the MCO/SE 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/SE; or

(2) the hospital contacted the MCO/SE but did not get instructions within an hour of the request.

**G. Physical health services (MCO only):** The benefit package includes primary (including those provided in school-based settings) and specialty physical health services provided by a licensed practitioner performed within the

scope of practice, as defined by state law and detailed in 8.310.2 NMAC, *Medical Services Providers*; 8.310.10 NMAC, *Midwife Services*, including out of hospital births and other related birthing services performed by certified nurse midwives or direct-entry midwives licensed by the state of New Mexico, who are either validly contracted with and fully credentialed by the MCO or validly contracted with HSD and participate in HSD's birthing options program; 8.310.11 NMAC, *Podiatry Services*; 8.310.3 NMAC, *Rural Health Clinic Services*; and 8.310.4 NMAC, *Federally Qualified Health Center Services*.

**H. Laboratory services (MCO or SE):** The benefit package includes laboratory services provided according to the applicable provisions of Clinical Laboratory Improvement Act (CLIA), as detailed in 8.324.2 NMAC, *Laboratory Services*. Laboratory costs shall be the responsibility of the SE when they are provided within, and billed by, a freestanding psychiatric hospital, a PPS exempt unit of a general acute hospital or UNM psychiatric emergency room. In the event that a psychiatrist orders lab work but completes that lab work in his/her office/facility and bills for it, the SE shall be responsible for payment. Lab costs shall be the responsibility of the MCO when a BH provider orders lab work that is performed by an outside, independent laboratory, including those lab services provided for persons within a freestanding psychiatric hospital, a psychiatric unit, a psychiatric unit within a general hospital or UNM psychiatric ER. All other covered laboratory services shall be the responsibility of the MCO.

**I. Diagnostic imaging and therapeutic radiology services (MCO or SE):** The benefit package includes medically necessary diagnostic imaging and radiology services, as detailed in 8.324.3 NMAC, *Diagnostic Imaging and Therapeutic Radiology Services*. Radiology costs shall be the responsibility of the SE when they are provided within, and billed by, a freestanding psychiatric hospital, a PPS exempt unit of a general acute hospital or UNM psychiatric emergency room. In the event that a psychiatrist orders radiology services but completes those tests in his/her office/facility and bills for it, the SE shall be responsible for payment. Radiology costs shall be the responsibility of the MCO when a BH provider orders radiology services that are performed by an outside, independent radiology facility, including those radiology services provided for persons within a freestanding psychiatric hospital, a psychiatric unit, a psychiatric unit within a general hospital or UNM psychiatric ER. All other diagnostic imaging and therapeutic radiology services shall be the responsibility of the MCO.

**J. Anesthesia services (MCO):** The benefit package includes anesthesia and monitoring services necessary for the performance of surgical or diagnostic procedures, as detailed in 8.310.5 NMAC, *Anesthesia Services*. Reimbursement for anesthesia related to electroconvulsive therapy (ECT) shall be the responsibility of the MCO.

**K. Vision services (MCO only):** The benefit package includes vision services, as detailed in 8.310.6 NMAC, *Vision Care Services*.

**L. Audiology services (MCO only):** The benefit package includes audiology services, as detailed in 8.324.6 NMAC, *Hearing Aids and Related Evaluation*.

**M. Dental services (MCO only):** The benefit package includes dental services, as detailed in 8.310.7 NMAC, *Dental Services*.

**N. Dialysis services (MCO only):** The benefit package includes medically necessary dialysis services, as detailed in 8.325.2 NMAC, *Dialysis Services*. Dialysis providers shall assist members in applying for and pursuing final medicare eligibility determination.

**O. Pharmacy services (MCO/SE):** The benefit package includes all pharmacy and related services, as detailed in 8.324.4 NMAC, *Pharmacy Services*. The MCO/SE shall maintain written policies and procedures governing its drug utilization review (DUR) program in compliance with all applicable federal medicaid laws. The MCO/SE shall use a single medicaid preferred drug list (PDL). The MCO/SE shall cover brand name drugs and drug items not generally on the MCO/SE formulary or PDL when determined to be medically necessary by the MCO/SE or through a fair hearing process. The MCO/SE shall include on their formulary or PDL all multi-source generic drug items with the exception of items used for cosmetic purposes, items consisting of more than one (1) therapeutic ingredient, anti-obesity items, items which are not medically necessary, and cough, cold and allergy medications. The MCO/SE shall reimburse family planning clinics, school-based health clinics, and DOH public health clinics for oral contraceptive agents and Plan B when dispensed to members and billed using HCPC codes and CMS 1500 claim forms. The MCO shall coordinate as necessary with the SE, and the SE shall coordinate with the MCO and the member's PCP when administering pharmacy services. The SE shall be responsible for payment of all ~~medications~~ drug items prescribed by a behavioral health provider, such as psychiatrists, psychologists certified to prescribe, psychiatric clinical nurse specialists, psychiatric nurse practitioners, and any other

prescribing practitioner contracted with the SE.

**P. Durable medical equipment and medical supplies (MCO only):** The benefit package includes the purchase, delivery, maintenance and repair of equipment, oxygen and oxygen administration equipment, nutritional products, disposable diapers, augmentative alternative communication devices and disposable supplies essential for the use of the equipment, as detailed in 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies*.

**Q. EPSDT services (MCO/SE):** The benefit package includes the delivery of the federally mandated early and periodic screening, diagnostic and treatment (EPSDT) services provided by a PCP and physical or behavioral health specialist, as detailed in 8.320.2 NMAC, *EPSDT Services*. The SE shall provide access to early intervention programs/services for members identified in an EPSDT screen as being at risk for developing or having a severe emotional, behavioral or neurological disorder.

**R. Tot-to-teen health checks (MCO only):** The MCO shall adhere to the periodicity schedule and ensure that eligible members receive EPSDT screens (tot-to-teen health checks). The services include the following with respect to treatment follow-up:

(1) education of and outreach to members regarding the importance of the health checks;

(2) development of a proactive approach to ensure that the members receive the services;

(3) facilitation of appropriate coordination with school-based providers;

(4) development of a systematic communication process with MCO network providers regarding screens and treatment coordination;

(5) processes to document, measure and assure compliance with the periodicity schedule; and

(6) development of a proactive process to insure the appropriate follow-up evaluation, referral and treatment, including early intervention for vision and hearing screening, dental examinations and current immunizations; the MCO will facilitate referral to the SE for identified behavioral health conditions.

**S. EPSDT private duty nursing (MCO only):** The benefit package includes private duty nursing for the EPSDT population, as detailed in 8.323.4 NMAC, *EPSDT Private Duty Nursing Services*. The services shall either be delivered in the member's home or the school setting.

**T. EPSDT personal care (MCO only):** The benefit package includes

personal care services for the EPSDT population, as detailed in 8.323.2 NMAC, *EPSDT Personal Care Services*.

**U. Services provided in schools (MCO/SE):** The benefit package includes services provided in schools, excluding those specified in the individual education plan (IEP) or the individualized family service plan (IFSP), as detailed in 8.320.6 NMAC, *School-Based Services for Recipients under 21 Years Of Age*.

**V. Nutritional services (MCO only):** The benefit package includes nutritional services furnished to pregnant women and children as detailed in 8.324.9 NMAC, *Nutrition Services*.

**W. Home health services (MCO only):** The benefit package includes home health services, as detailed in 8.325.9 NMAC, *Home Health Services*. The MCO is required to coordinate home health and the home and community-based waiver programs if a member is eligible for both home health and waiver services.

**X. Hospice services (MCO only):** The benefit package includes hospice services, as detailed in 8.325.4 NMAC, *Hospice Care Services*.

**Y. Ambulatory surgical services (MCO only):** The benefit package includes surgical services rendered in an ambulatory surgical center setting, as detailed in 8.324.10 NMAC, *Ambulatory Surgical Center Services*.

**Z. Rehabilitation services (MCO only):** The benefit package includes inpatient and outpatient hospital and outpatient physical, occupational and speech therapy services, as detailed in 8.325.8 NMAC, *Rehabilitation Services Providers* and licensed speech and language pathology services furnished under the EPSDT program as detailed in 8.323.5 NMAC, *Licensed Speech and Language Pathologists*. The MCO is required to coordinate rehabilitation services with the home and community-based waiver programs if a member is eligible for rehabilitation and waiver services.

**AA. Reproductive health services (MCO only):** The benefit package includes reproductive health services, as detailed in 8.325.3 NMAC, *Reproductive Health Services*. The MCO will provide female members with direct access to women's health specialists within the network for covered care necessary to provide women's routine and preventive health care services. This is in addition to the member's designated source of primary care if that source is not a women's health specialist.

(1) The MCO shall provide Medicaid members with sufficient information to allow them to make informed choices including the following:

(a) types of family planning services available;

(b) a member's right to access these services in a timely and confidential manner; and

(c) freedom to choose a qualified family planning provider who participates in the MCO network or from a provider who does not participate in the MCO network.

(2) If members choose to receive family planning services from an out-of-network provider, they shall be encouraged to exchange medical information between the PCP and the out-of-network provider for better coordination of care.

**BB. Pregnancy termination procedures (MCO only):** The benefit package includes services for the termination of pregnancy as allowed by 42 CFR 441.200 et seq. Medically necessary pregnancy terminations which do not meet the requirements of 42 CFR 441.202 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.

**CC. Emergency and non-emergency transportation services (MCO only):** The benefit package includes transportation service such as ground ambulance, air ambulance, taxicab and handivan, commercial bus, commercial air, meal and lodging services as indicated for medically necessary physical and behavioral health services, as detailed in 8.324.7 NMAC, *Transportation Services*. Non-emergency transportation is covered only when a member does not have a source of transportation available and when the member does not have access to alternative free sources. The MCO/SE shall coordinate efforts when providing transportation services for Medicaid members/customers requiring physical or behavioral health services.

**DD. Prosthetics and orthotics (MCO only):** The benefit package includes prosthetic and orthotic services as detailed in 8.324.8 NMAC, *Prosthetics and Orthotics*.

**EE. Preventative physical health services (MCO only):** The benefit package shall include preventative services that follow current national standards and are recommended by the U.S preventive services task force, the centers for disease control and prevention, or the American college of obstetricians and gynecologists. The MCO shall follow current national standards for preventative health services.

**FF. Telehealth services (MCO/SE):** The benefit package includes telehealth services as detailed in 8.310.13 NMAC, *Telehealth Services*.

[8.305.7.11 NMAC - Rp 8.305.7.11 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-



1-07; A, 7-1-08]

**8.305.7.13 BEHAVIORAL HEALTH SERVICES INCLUDED IN THE BENEFIT PACKAGE FOR ADULTS AND CHILDREN.** The SE shall cover the following medicaid services. If, at any time, other medicaid behavioral health services are included in the state plan or a state plan amendment, the SE shall cover those services also.

**A. Inpatient hospital services:** The benefit package includes inpatient hospital psychiatric services provided in general hospital units and prospective payment system (PPS)-exempt units in a general hospital as detailed in 8.311.2 NMAC, *Hospital Services*.

**B. Hospital outpatient services:** The benefit package includes outpatient psychiatric and partial hospitalization services provided in PPS-exempt units of general hospitals as detailed in 8.311.4 NMAC, *Outpatient Psychiatric Services and Partial Hospitalization*.

**C. Outpatient health care professional services:** The benefit package includes outpatient health care services, as detailed in 8.310.8 NMAC, *Mental Health Professional Services*.

**D. Comprehensive community support services:** The benefit package includes comprehensive community support services as detailed in 8.315.6 NMAC, *Comprehensive Community Support Services*.

**E. Assertive community treatment services (ACT):** The benefit package includes assertive community treatment services for members eighteen (18) years of age and older as detailed in 8.315.5 NMAC, *Assertive Community Treatment Services*.

[8.305.7.13 NMAC - Rp 8.305.7.13 NMAC, 7-1-04; A, 7-1-05; A, 7-1-08]

**8.305.7.14 BEHAVIORAL HEALTH SERVICES INCLUDED IN THE SALUD! BENEFIT PACKAGE FOR CHILDREN ONLY:** The SE shall provide the following medicaid services. The benefit package includes prevention, screening, diagnostic, ameliorative services and other medically necessary behavioral health care and substance abuse treatment or services for medicaid members under 21 years of age whose need for behavioral health services is identified by a licensed health care provider [and/or] or during an EPSDT screen. All behavioral health care services shall be provided in accordance with the current New Mexico Children's Code and the Children's Mental Health and Developmental Disabilities Act, NMSA Section 32A-6-1 to 32A-6-22. The services include the following:

**A. Inpatient hospitaliza-**

**tion in free standing psychiatric hospitals:** The benefit package includes inpatient services in free standing psychiatric hospitals as detailed in 8.321.2 NMAC, *Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals*.

**B. Accredited residential treatment center services:** The benefit package includes accredited residential treatment services as detailed in 8.321.3 NMAC, *Accredited Residential Treatment Center Services*.

**C. Nonaccredited residential treatment centers and group homes:** The benefit package includes residential treatment services as detailed in 8.321.4 NMAC, *Non-Accredited Residential Treatment Centers and Group Homes*.

**D. Treatment foster care:** The benefit package includes treatment foster care services as detailed in 8.322.2 NMAC, *Treatment Foster Care*.

**E. Treatment foster care II:** The benefit package includes treatment foster care II, as detailed in 8.322.5 NMAC, *Treatment Foster Care II*.

**F. Outpatient and partial hospitalization services in freestanding psychiatric hospital:** The benefit package includes outpatient and partial hospitalization services provided in freestanding psychiatric hospitals, as detailed in 8.321.5 NMAC, *Outpatient and Partial Hospitalization Services in Freestanding Psychiatric Hospitals*.

**G. Day treatment services:** The benefit package includes day treatment services, as detailed in 8.322.4 NMAC, *Day Treatment Services*.

**H. Behavior management skills development services (BMSDS):** The benefit package includes behavior management services, as detailed in 8.322.3 NMAC, *Behavior Management Skills Development Services*.

**I. School-based services:** The benefit package includes counseling, evaluation and therapy furnished in a school-based setting, but not when specified in the individual education plan (IEP) or the individualized family service plan (IFSP), as detailed in 8.320.6 NMAC, *School-Based Services for Recipients under 21 Years of Age*.

~~**J. Case management services for the medically at risk:** The benefit package includes case management services for individuals who are under 21 who are medically at risk for behavioral health conditions, as detailed in 8.320.5 NMAC, *EPSDT Case Management*.~~

~~**K. Licensed alcohol and drug abuse counselors:** The benefit package includes alcohol and drug abuse counseling, as detailed in 8.323.3 NMAC, *Licensed Alcohol and Drug Abuse*~~

*Counselors.*

~~**K. Multi-systemic therapy services:** The benefit package includes multi-systemic therapy services, as detailed in 8.322.6 NMAC, *Multi-Systemic Therapy Services*.~~

[8.305.7.14 NMAC - Rp 8.305.7.14 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-08]

**8.305.7.15 BEHAVIORAL HEALTH SERVICES INCLUDED IN THE BENEFIT PACKAGE FOR ADULTS ONLY:** ~~[The following services shall be provided in accordance with the New Mexico Mental Health and Developmental Disabilities Code. The SE shall provide these medicaid services:~~

~~**A. Psychosocial rehabilitation:** The benefit package includes psychosocial rehabilitation services as detailed in 8.315.3 NMAC, *Psychosocial Rehabilitation Services*.~~

~~**B. Case management services for the chronically mentally ill:** The benefit package includes case management services as detailed in 8.326.4 NMAC, *Case Management Services for the Chronically Mentally Ill*.] The benefit package includes psychosocial rehabilitation, as detailed in 8.315.3 NMAC *Psychosocial Rehabilitation Services*, and shall be provided by the SE, in accordance with the New Mexico Mental Health and Developmental Disabilities Code, NMSA Sections 43-1-1 to 43-1-25.~~

[8.305.7.15 NMAC - Rp 8.305.7.15 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.8 NMAC, Sections 11, 12 and 13, effective July 1, 2008.

### 8.305.8.11 BROAD STANDARDS:

**A. NCQA requirement:** The MCO shall have and maintain national committee for quality assurance (NCQA) accreditation for its medicaid product line. If the MCO is not so accredited, it will actively pursue such accreditation. NCQA accreditation is not required for the SE.

(1) An MCO with NCQA national accreditation shall provide HSD a copy of its current certificate of accreditation together with a copy of the survey report, scores for the medicaid product line using the standards categories and scores using the reporting categories. In addition, the MCO shall provide to HSD a copy of any

annual NCQA or national accreditation review/revision of accreditation status for the medicaid product line.

(2) If the MCO is not accredited, it must provide a copy of the NCQA/national accreditation confirmation letter indicating the date for the site visit.

**B. HEDIS requirement:**

The MCO shall submit a copy of its audited health plan employer data and information set (HEDIS) data submission tool to HSD at the same time it is submitted to NCQA. The MCO is expected to use and rely upon HEDIS data as an important measure of performance for HSD. The MCO is expected to incorporate the results of each year's HEDIS data submission into its QI/QM plan. For the MCO accredited by NCQA, the data submission shall be at the same time it is submitted to NCQA. The results of the MCO's HEDIS® Compliance Audit™ shall accompany its data submission tool.

**C. Mental health reporting requirement:** The SE shall be responsible for the collection and submission of a statistically valid ~~[mental health statistics improvement project (MHSIP)]~~ New Mexico consumer/family satisfaction project (C/FSP) survey for both the medicaid adult and child family population as an annual reporting requirement. The SE shall adhere to the established HSD survey administration and reporting process. The annual ~~[MHSIP]~~ C/FSP shall also include non-survey indicators defined by HSD as part of this reporting requirement for each contract calendar year. The SE shall report the ~~[MHSIP]~~ C/FSP data set and any additional HSD requested data that are similar to that of ~~[MHSIP]~~ C/FSP to HSD annually each fiscal year. The SE shall submit to HSD a written analysis of the annual ~~[MHSIP]~~ C/FSP report based on the aggregate survey data results for both the child/family and adult populations.

**D. Collection of clinical data:** For indicators requiring clinical data as a data source, the MCO/SE shall collect and utilize a sample of clinical records sufficient to produce statistically valid results. The size of the sample shall support stratification of the population by a range of demographic and clinical factors pertinent to the special vulnerable populations served. These populations shall include, but are not limited to, ethnic minorities, homeless, pregnant women, gender and age-based populations.

**E. Behavioral health data (SE only):** For reporting purposes, BH data shall be collected and reported for any medicaid managed care member receiving any behavioral health service provided by a licensed or certified behavioral health practitioner ~~(including behavioral health~~

~~case managers)]~~, regardless of setting or location as required by HSD. This includes behavioral health licensed professionals, practicing within the SE. The SE shall monitor and ensure the integrity of data. Findings shall be reported to HSD upon request.

**F. Provision of emergency services:** The MCO shall ensure that acute general hospitals are reimbursed for emergency services, which they will provide because of federal mandate, such as the "anti-dumping" law in the Omnibus Reconciliation Act of 1989, P.L. (101-239) and 42 U.S.C. Section 1395dd. (1867 of the Social Security Act). The SE shall ensure that the UNM psychiatric emergency room is reimbursed for emergency services provided.

**G. Disease reporting:** The MCO/SE shall require its providers to comply with the disease reporting required by the "New Mexico Regulations Governing the Control of Disease and Conditions of Public Health Significance, 1980".

**H.** The MCO/SE agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. Section 7401 et seq. and the Federal Water Pollution Control Act, as amended and codified at 33 U.S.C. Section 1251 et seq. In addition to any and all remedies or penalties set forth in this agreement, any violation of this provision shall be reported to the HHS and the appropriate regional office of the environmental protection agency.

[8.305.8.11 NMAC - Rp 8 NMAC 4.MAD.606.7.2, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08]

**8.305.8.12 STANDARDS FOR QUALITY MANAGEMENT AND IMPROVEMENT:**

**A. Program structure:** Quality management is an integrated approach that links knowledge, structure and processes together throughout an MCO/SE's system to assess and improve quality. The goal of quality improvement activities is to improve the quality of clinical care and services provided to members in the areas of health care delivery as well as supportive administrative systems. The MCO/SE's quality management (QM) and improvement (QI) structures and processes shall be planned, systematic, clearly defined, and at least as stringent as federal requirements; responsibilities shall be assigned to appropriate individuals. The MCO/SE shall submit annually its comprehensive QM/QI plan for the coming year as well as a comprehensive QM/QI evaluation of the previous year's achievement and performance of its QM/QI goals and initiatives.

The QI program for the MCO/SE shall be reviewed and approved by HSD annually. The MCO/SE's QI/QM activities shall demonstrate the linkage of quality improvement projects to findings from multiple quality evaluations, such as the external quality review (EQR) annual evaluation, opportunities for improvement identified from either the annual HEDIS indicators or state defined performance measures and the annually required consumer satisfaction surveys and provider surveys, as well as any findings identified by an accreditation body such as NCQA.

(1) The QI program shall include: specific QI targeted goals, objectives and structure that cover the MCO/SE's immediate objectives for each contract year or calendar year, and long-term objectives for the entire contract period. The annual QI plan shall include the specific interventions to be utilized to improve the quality targets, as well as, the timeframes for evaluation.

(2) The QI program shall be accountable to the governing body that reviews and approves the QI program.

(3) The program description shall specify the roles, authority and responsibilities of a designated physician/psychiatrist in the QI program.

(4) A quality-related committee shall oversee and be involved in QI activities.

(5) The program description shall specify the role of the QI committee and subcommittees, including any committees dealing with oversight of delegated activities.

(6) The program description shall describe QI committee composition, including MCO/SE providers, committee member selection policies, roles and responsibilities.

(7) The program description shall include: the QI committee functions, including policy recommendations; review/evaluation of quality improvement activities; institution of needed actions; follow-up of instituted actions; and contemporaneous documentation of committee decisions and actions.

(8) The program description shall address QI for all major demographic groups within the MCO/SE, such as, infants, children, adolescents, adults, seniors and special population groups, including, but not limited to, specific racial and ethnic groups, pregnant members, developmentally disabled members and persons with behavioral health disorders (SE only), including co-occurring disorders, or other chronic diseases.

(9) The program description shall address member satisfaction, including methods of collecting and evaluating information, including the consumer assessment of health plans survey (CAHPS), a survey

identifying opportunities for improvement, implementing and measuring effectiveness of intervention and informing providers of results.

(10) The description or work plan shall address the process by which the MCO/SE adopts, reviews at least every two years and appropriately updates and disseminates evidence-based clinical practice guidelines for provision of services for acute and chronic conditions, including behavioral health (SE only). The MCO/SE shall involve its providers in this process.

(11) The program description or work plan shall address activities aimed at addressing culture-specific health beliefs and behaviors as well as risk conditions and shall respond to member and provider requests for culturally appropriate services. Culturally appropriate services may include: language and translation services, dietary practices, individual and family interaction norms and the role of the family in compliance with long-term treatment. The MCO/SE shall incorporate cultural competence into utilization management, quality improvement, and the planning for the course of treatment.

(12) The program description or work plan shall address activities to improve health status of members with chronic conditions, including identification of such members; implementation of services and programs to assist such members in managing their conditions, including behavioral health; and informing providers about the programs and services for members assigned to them.

(13) The program description or work plan shall address activities that ensure continuity and coordination of care, including physical and behavioral health services, collection and analysis of data, and appropriate interventions to improve coordination and continuity of care.

(14) The program description or work plan shall include specific activities that facilitate continuity and coordination of physical and behavioral health care. The responsibility for these activities shall not be delegated.

(15) The program description shall include: objectives for the year; activities regarding quality of clinical care and service, timelines, responsible person, planned monitoring for both newly identified and previously identified issues and an annual evaluation of the QI program.

(16) The program description shall include means by which the MCO/SE shall, upon request, communicate quality improvement results to its members and providers.

(17) The QI program personnel and information resources shall be adequate to meet program needs and devoted to and available for quality improvement activi-

ties.

(18) The annual written evaluation submitted to HSD shall include a review of completed and continuing quality improvement activities that address quality of clinical care and quality of service; determination and documentation of any demonstrated improvements in quality of care and service; and evaluation of the overall effectiveness of the QI program based on evidence of meaningful improvements (See Subsection J of 8.305.8.12 NMAC, *Effectiveness of the QI Program*)

(19) For targeting QI activities to the provider and consumer surveys, the program description or work plan shall include specific activities related to findings identified in the annual consumer and provider surveys as areas that indicate targeted QI interventions and monitoring.

#### B. Program operations:

The QI committee shall:

(1) recommend QI policy review and evaluate the results of quality improvement activities, institute needed action and ensure follow-up, as appropriate;

(2) have contemporaneous dated and signed minutes that reflect all QI committee decisions and actions;

(3) ensure that the MCO/SE's providers participate actively in the QI program;

(4) ensure that the MCO/SE shall coordinate the QI program with performance monitoring activities throughout the organization, including but not limited to, utilization management, fraud and abuse detection, credentialing, monitoring and resolution of member grievances and appeals, assessment of member satisfaction and medical records review;

~~(5) ensure that there shall be linkage between the QI program and other management activities, such as network changes, benefits redesign, practice feedback to providers, member health education and member services, which will be documented in quarterly progress reports submitted to HSD;~~

~~(6) (5) ensure that there shall be evidence that the results of QI activities performance improvement projects and reviews are used to improve quality; there will be evidence of communication of and use of the results of QI activities, performance improvement projects and reviews, with appropriate individual and institutional providers;~~

~~(7) (6) ensure that the MCO/SE shall also coordinate the QI program with performance monitoring activities throughout the organization, including but not limited to, its compliance with all quality standards and other specifications in the contract for medicaid services, such as compliance with state standards;~~

~~(8) (7) ensure that the MCO/SE~~

QI program is applied to the entire range of health services provided through the MCO/SE by assuring that all major population groups, care settings and types of service are included in the scope of the review; a major population or prevalent group is one that represents at least 5% of an MCO/SE's enrollment; and

~~(9) (8) ensure that stakeholders/members have an opportunity to provide input.~~

C. **Health services contracting:** Contracts with individual and institutional providers shall specify that contractors cooperate with the MCO/SE's QI program.

D. **Continuous quality improvement/total quality management:** The MCO/SE shall ensure that clinical and nonclinical aspects of the MCO/SE quality management program shall be based on principles of continuous quality improvement/total quality management (CQI/TQM). Such an approach shall include at least the following:

(1) recognition that opportunities for improvement are unlimited;

(2) be data driven;

(3) use member and provider input; and

(4) require on-going measurement of clinical and non-clinical effectiveness and programmatic improvements.

E. **Member satisfaction:** The MCO/SE shall implement methods aimed at member satisfaction with the active involvement and participation of members and their families, whenever possible.

(1) The MCO in accordance with NCQA requirements, shall conduct and submit to HSD as part of its HEDIS reporting requirements, an annual survey of member satisfaction (CAHPS or latest version of adult and child instruments). The SE, in accordance with the requirement for the annual consumer satisfaction survey, will submit the ~~[MHSIP]~~ C/FSP analysis report to HSD and utilize its results in the following year's quality initiatives.

(2) The MCO/SE shall evaluate member grievances and appeals for trends and specific problems, including behavioral health problems.

(3) The MCO/SE shall use input from the consumer advisory board to identify opportunities for improvement in the quality of MCO/SE performance.

(4) The MCO/SE shall implement interventions to improve its performance.

(5) The MCO/SE shall measure the effectiveness of the interventions.

(6) The MCO/SE shall inform providers, HSD, and the MCO/SE members of the results of member satisfaction activities.

(7) The MCO shall participate in

the design of specific questions for the CAHPS adult and child surveys.

**F. Health management systems:**

(1) The MCO/SE shall actively work to improve the health status of its members with chronic physical and behavioral health conditions, utilizing best practices throughout the MCO/SE's provider networks. Additionally, the MCO/SE shall implement policies and procedures for coordinating care between their organizations.

(a) The MCO shall proactively identify members with chronic medical conditions, and offer appropriate outreach, services and programs to assist in managing and improving their chronic conditions. The SE shall proactively identify members with chronic behavioral health (both mental health and substance abuse) conditions, including co-occurring disorders, and offer appropriate outreach, services and programs to assist in managing and improving their chronic behavioral health conditions.

(b) The SE shall proactively identify the unduplicated number of adult severely disabled mentally ill (SDMI) and severe emotionally, behaviorally and neurobiologically disturbed children (SED) and chronic substance abuse (CSA) members served, including those with co-occurring mental health and substance abuse disorders.

(c) The MCO/SE shall report the following adverse events involving SDMI, SED, CSA, and co-occurring mental health and substance abuse members to HSD on a monthly basis: suicides, other deaths, attempted suicides, involuntary hospitalizations, detentions for protective custody and detentions for alleged criminal activity utilizing and HSD-provided reporting template. The SE shall utilize HSD's definitions for the identification of these categories of behavioral health members for standardization purposes.

(d) The MCO/SE shall proactively identify individuals with special health care needs who have or are at increased risk for a chronic physical and behavioral health condition.

(e) The MCO/SE shall inform and educate its providers about using the health management programs for the members.

(f) The MCO/SE shall participate with providers to reduce inappropriate use of psychopharmacological medications and adverse drug reactions.

(g) The MCO/SE shall periodically update its providers regarding best practices and on the procedures for appropriate healthcare referral.

(2) The MCO/SE shall pursue continuity of care for members.

(a) The MCO/SE shall report

changes in its provider network to HSD.

(b) The MCO/SE shall have a defined health delivery process to promote a high level of member compliance with follow-up appointments, consultations/referrals and diagnostic laboratory, diagnostic imaging and other testing.

(c) The MCO/SE shall have a defined process to ensure prompt member notification by its providers of abnormal results of diagnostic laboratory, diagnostic imaging and other testing and this will be documented in the medical record.

(d) The MCO/SE shall ensure that the processes for follow-up visits, consultations and referrals are consistent with high quality care and service and do not create a clinically significant impediment to timely medically necessary services. The determination of medical necessity shall be based on HSD's medical necessity definition and its application.

(e) The MCO/SE shall ensure that all medically necessary referrals are arranged and coordinated by either the referring provider or by the MCO/SE's care coordination unit.

(f) The MCO/SE shall implement policies and procedures to ensure that continuity and coordination of care occur across practices, provider sites and between the MCO/SE. In particular, the MCO/SE shall coordinate, in accordance with applicable state and federal privacy laws, with other state agencies such as DOH, CYFD protective services and juvenile justice, corrections community reentry services, as well as, with the schools. In addition, the SE shall coordinate services with all applicable state agencies comprising the collaborative.

(g) The MCO/SE shall assist and monitor for continuity of care the transitions between providers in order to avoid abrupt changes in treatment plan and caregiver for members currently being served.

(3) At the request of a member or legal guardian, the MCO/SE shall provide information on options for converting coverage to a different insurance to members whose enrollment is terminated due to loss of medicaid eligibility and this shall be documented.

**G. Clinical practice guidelines:** The MCO/SE shall disseminate recommended practice guidelines, practice parameters, consensus statements and specific criteria for the provision of acute and chronic physical and behavioral health care services.

(1) The MCO/SE shall select the clinical issues to be addressed with clinical guidelines based on the needs of the medicaid populations.

(2) The clinical practice guidelines shall be evidence-based.

(3) The MCO/SE shall involve

board certified providers from its network who are appropriate to the clinical issue in the development and adoption of clinical practice guidelines.

(4) The MCO/SE shall develop a mechanism for reviewing the guidelines when clinically appropriate, but at least every two years, and updating them as necessary.

(5) The MCO/SE shall distribute the guidelines to the appropriate providers and to HSD, upon request.

(6) The MCO/SE shall annually measure practitioner performance against at least two important aspects of three clinical practice guidelines and determine consistency of decision-making based on the clinical practices guidelines.

(7) Decision-making in utilization management, member education, interpretation of covered benefits and other areas shall be consistent with those guidelines.

(8) The MCOs shall implement targeted disease management protocols and procedures for chronic diseases or conditions, such as asthma, diabetes, and hypertension that are appropriate to meet the needs of the varied medicaid populations. The SE shall implement targeted disease management protocols and procedures for chronic diseases or conditions, such as bipolar disorder, depression, and schizophrenia that are appropriate to meet the needs of the varied medicaid populations.

**H. Quality assessment and performance improvement:** The MCO/SE shall achieve required minimum performance levels, as established by HSD and by CMS, on certain quality performance measures and projects. These required levels of performance would address a broad spectrum of key aspects of enrollee care and services. These quality measures may change from year to year and may be used in part to determine the MCO assignment algorithm. In addition, the MCO shall provide HSD with copies of all studies performed for national accreditation such as NCQA. The SE shall annually provide HSD with copies of its QM/QI studies including its data analysis.

(1) An agreed upon number of disease management/performance measures shall be identified by HSD, in consultation with the MCO, at the beginning of each contract year. The MCO/SE shall achieve minimum performance levels set by HSD for each performance measure. Examples of quality measures used in performance improvement projects may include: EPSDT screening rates, childhood and adolescent immunization rates, ER visits or adherence to grievance resolution timeframes. The SE shall implement the required number of targeted disease management programs as defined by HSD such

as depression, bipolar disorder and co-occurring disorders.

(2) The MCO/SE shall measure its performance, using claims, encounter data and other predefined sources of information, and report its performance on each measure to HSD at a frequency to be determined by HSD.

**I. Intervention and follow-up for clinical and service issues:** The MCO/SE shall have a process and take action to improve quality by addressing opportunities for improving performance identified through clinical and service QI activities, as appropriate, and shall also assess the effectiveness of the interventions through systematic follow-up.

(1) The MCO/SE shall implement interventions to improve practitioner and system performance as appropriate.

(2) The MCO/SE shall implement appropriate corrective interventions when it identifies individual occurrences of poor or substandard quality, especially regarding health and safety issues.

(3) The MCO/SE shall implement appropriate corrective interventions when it identifies underutilization or overutilization.

**J. Effectiveness of the QI program:** The MCO/SE shall evaluate the overall effectiveness of its QI program and demonstrate improvements in the quality of clinical care and the quality of service to its members.

(1) The MCO/SE shall perform an annual written evaluation of the QI program and provide a copy to HSD for CMS review. This evaluation shall include at least the following:

(a) a description of completed and ongoing QI activities;

(b) trending of measures to assess performance in quality of clinical care and quality of service;

(c) an analysis of whether there have been demonstrated improvements in the quality of clinical care and quality of service; and

(d) an evaluation of the overall effectiveness of the QI program.

(2) There shall be evidence that QI activities have contributed to meaningful improvement in the quality of clinical care and quality of service, including preventive health care, provided to members.

[8.305.8.12 NMAC - Rp 8 NMAC 4.MAD.606.7.2, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08]

**8.305.8.13 STANDARDS FOR UTILIZATION MANAGEMENT:** New Mexico Medicaid requires appropriate utilization management (UM) standards to be implemented as well as activities to be performed so that excellent services are provided in a coordinated fashion with neither

over nor under-utilization. The MCO/SE's UM programs shall be based on standard external national criteria, where available, and established clinical criteria, which are congruent with HSD's medical necessity service definition as defined in 8.305.1 NMAC and are applied consistently in UM decisions by the MCO/SE. The MCO/SE's utilization management program shall assign responsibility to appropriately qualified, educated, trained, and experienced individuals in order to manage the use of limited resources; to maximize the effectiveness of care by evaluating clinical appropriateness; authorize the type and volume of services through fair, consistent and culturally competent decision making; and assure equitable access to care. These standards shall also apply to pharmacy utilization management including the formulary exception process. Services provided within the IHS and tribal 638 networks are not subject to prior authorization requirements, except for behavioral health residential treatment center (RTC) services.

**A. Program design:**

(1) A written description of the UM program shall outline the program structure and include a clear definition of authority and accountability for all activities between the MCO and entities to which the MCO/SE delegates UM activities.

(2) A designated physician and a behavioral health care physician for the SE shall have substantial involvement in the design and implementation of the UM program.

(3) The description shall include the scope of the program; the processes and information sources used to determine benefit coverage; clinical necessity, appropriateness and effectiveness; policies and procedures to evaluate care coordination, discharge criteria, site of services, levels of care, triage decisions and cultural competence of care delivery; processes to review, approve and deny services; processes to evaluate service outcomes; and a plan to improve outcomes, as needed. The above service definitions are to be no less than the amount, duration and scope for the same services furnished to members under fee-for-service Medicaid as set forth in 42 CFR Section 440.230.

(4) The MCO/SE shall ensure that the services are sufficient in amount, duration and scope to reasonably be expected to achieve the purpose for which the services are furnished. The MCO/SE may not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of the beneficiary's diagnosis, type of illness, or condition.

(5) The UM program shall be evaluated and approved annually by senior management and the medical (or behavioral health) director or the QI committee.

(6) The UM program shall include policies and procedures for monitoring inter-rater reliability of all individuals performing UR review. The procedures shall include a monitoring and education process for all UR staff identified as not meeting 90% agreement on test cases, until adequately resolved.

**B. UM decision criteria:**

To make utilization decisions, the MCO/SE shall use written utilization review decision criteria that are based on reasonable medical evidence, consistent with the New Mexico Medicaid definition for medically necessary services, and that are applied in a fair, impartial and consistent manner to serve the best interests of all members.

(1) UM decisions shall be based on reasonable and scientifically valid utilization review criteria that are objective and measurable, insofar as practical.

(2) The criteria for determining medical necessity shall be academically defensible; based on national standards of practice when such standards are available; involve appropriate practitioners when developing, adopting and reviewing criteria; and acceptable to the MCO/SE's medical (or behavioral health) director, peer consultants and relevant local providers. The MCO/SE shall specify what constitutes medically necessary services in a manner that is no more restrictive than that used by HSD as indicated in state statutes and regulations. According to this definition, the MCO/SE must be responsible for covered services related to the following:

(a) the prevention, diagnosis, and treatment of health impairments; and

(b) the ability to attain, maintain, or regain functional capacity.

(3) Criteria for determination of medical appropriateness shall be clearly documented.

(4) The MCO/SE shall maintain evidence that it has reviewed the criteria at specified intervals and that the criteria have been updated, as necessary.

(5) The MCO/SE shall state in writing how practitioners can obtain UM criteria and shall provide criteria to its practitioners upon request.

**C. Authorization of services:** For the processing of requests for initial and continuing authorization of services, the MCO/SE shall:

(1) have a policy and procedure in place for authorization decisions;

(2) require that its subcontractors have in place written policies and procedures;

(3) have in effect a mechanism to ensure consistent application of review criteria for authorization decisions; and

(4) consult with requesting providers when appropriate.

**D. Use of qualified pro-**

**professionals:** The MCO/SE shall have written policies and procedures explaining how qualified health professionals shall assess the clinical information used to support UM decisions.

(1) Appropriately licensed and experienced health care practitioners whose education, training, experience and expertise are commensurate with the UM reviews conducted shall supervise review decisions.

(2) Denials based on medical necessity shall be made by a designated physician for the UM program. The reason for the denial shall be cited.

(3) For a health service determined to be medically necessary, but for which the level of care (setting) is determined to be inappropriate, the MCO/SE shall approve the appropriate level of care as well as deny that which was determined to be inappropriate.

(4) The reasons for review decisions (approve/deny) shall be clearly documented and communicated to the requesting practitioner responsible for justifying the medical necessity.

**E. Timeliness of decisions and notifications:** The MCO/SE shall make utilization decisions and notifications in a timely manner that accommodates the clinical urgency of the situation and shall minimize disruption in the provision and continuity of health care services. The following time frames are required and shall not be affected by "pend" decisions.

**(1) Precertification - routine:**

(a) **Decision:** For precertification of non-urgent (routine) care, the MCO/SE shall make a decision within 14 calendar days from receipt of request for service.

(b) **Notification:** For authorization or denial of non-urgent (routine) care, the MCO/SE shall notify a provider of the decision within one working day of making the decision.

(c) **Confirmation - denial:** For denial of non-urgent (routine) care, the MCO/SE shall give the member and provider written or electronic confirmation of the decision within two working days of making the decision.

**(2) Precertification - urgent:**

(a) **Decision and notification:** For precertification of urgent care, the MCO/SE shall make a decision and notify the provider of the decision within 72 hours of receipt of request. For authorization of urgent care that results in a denial, the MCO/SE shall notify both the member and provider that an expedited appeal has already occurred.

(b) **Confirmation - denial:** For denial of urgent care, the MCO/SE shall give the member and provider written or electronic confirmation of the decision within two working days of making the

decision. The MCO/SE shall provide written confirmation of its decision within two working days of providing notification of a decision if the initial notification was not in writing.

(3) **Precertification - residential services (SE only):** For precertification of RTC, TFC and group home, the SE shall make a decision within five working days from receipt of request for service.

(4) **Precertification - extensions:** For precertification decisions of non-urgent or urgent care, a 14 calendar day extension may be requested by the member or provider. A 14 calendar day extension may also be requested by the MCO/SE. The MCO/SE must justify in the UM file the need for additional information and that the 14 day extension is in the member's interest.

**(5) Concurrent - routine:**

(a) **Decisions:** For concurrent review of routine services, the MCO/SE shall make a decision within 10 working days of the receipt of the request.

(b) **Notification:** For authorization or denial of routine continued stay, the MCO/SE shall notify a provider of the decision within one working day of making the decision.

(c) **Confirmation - denial:** For denial of routine continued stay, the MCO/SE shall give the member and provider written or electronic confirmation within one working day of the decision. The MCO/SE shall provide written confirmation of its decision within two working days of providing notification of a decision if the initial notification was not in writing.

**(6) Concurrent - urgent:**

(a) **Decision:** For concurrent review of urgent services, the MCO/SE shall make a decision within one working day of receipt of request.

(b) **Notification:** For authorization or denial of urgent continued stay, the MCO/SE shall notify a provider of the decision within one working day of making the decision. The MCO/SE shall initiate an expedited appeal for all denials of concurrent urgent services.

(c) **Confirmation - denial:** For denial of urgent continued stay, the MCO/SE shall give the member and provider written or electronic confirmation within one working day of the decision. The MCO/SE shall provide written confirmation of its decision within two working days of providing notification of a decision if the initial notification was not in writing.

(7) **Concurrent - residential services (SE only):** For concurrent reviews of RTC, TFC and group home, the SE shall make a decision within five working days from receipt of request for service. Timelines for routine and urgent concurrent

shall apply.

(8) **Administrative/technical denials:** When the MCO/SE denies a request for services due to the requested service not being covered by medicaid or due to provider noncompliance with the MCO/SE's administrative policies, the MCO/SE shall adhere to the timelines cited above for decision making, notification and written confirmation.

**F. Use of clinical information:** When making a determination of coverage based on medical necessity, the MCO/SE shall obtain relevant clinical information and consult with the treating practitioner, as appropriate.

(1) A written description shall identify the information required and collected to support UM decision making.

(2) A thorough assessment of the member's needs based on clinical appropriateness and necessity shall be performed.

(3) There shall be documentation that relevant clinical information is gathered consistently to support UM decision making. The MCO/SE UM policies and procedures will clearly define in writing for providers what constitutes relevant clinical information.

(4) The clinical information requirements for UM decision making shall be made known in advance to relevant treating providers.

**G. Denial of services:** A "denial" is a nonauthorization of a request for care or services. The MCO/SE shall clearly document in the UR file a reference to the provision guideline, protocol or other criteria on which the denial decision is based, and communicate the reason for each denial.

(1) The MCO/SE shall require that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by a health care professional who has appropriate clinical expertise in treating the member's condition or disease, such as the MCO/SE medical director.

(2) The MCO/SE shall make available to a requesting provider a physician reviewer to discuss, by telephone, denial decisions based on medical necessity.

(3) The MCO/SE shall send written notification to the member of the reason for each denial based on medical necessity and to the provider, as appropriate.

(4) The MCO/SE shall recognize that a utilization review decision made by the designated HSD official resulting from a fair hearing is final and shall be honored by the MCO/SE, unless the MCO/SE successfully appeals the decision through judicial hearing or arbitration.

**H. Compensation for UM**

**activities:** Each MCO/SE contract must provide that, consistent with 42 CFR Sections 438.6(h) and 422.208, compensation to individuals or entities that conduct UM activities is not structured so as to provide incentives for the individual or entity to deny, limit, or discontinue medically necessary services to any member.

**I. Evaluation and use of new technologies:** The MCO/SE and its delegates shall evaluate the inclusion of new medical technology and the new applications of existing technology in the benefit package. This includes the evaluation of clinical procedures and interventions, drugs and devices.

(1) The MCO/SE shall have a written description of the process used to determine whether new medical technology and new uses of existing technologies shall be included in the benefit package.

(a) The written description shall include the decision variables used by the MCO/SE to evaluate whether new medical technology and new applications of existing technology shall be included in the benefit package.

(b) The process shall include a review of information from appropriate government regulatory bodies as well as published scientific evidence.

(c) Appropriate professionals shall participate in the process to decide whether to include new medical technology and new uses of existing technology in the benefit package.

(2) An MCO/SE shall not deem a technology or its application as experimental, investigational or unproven and deny coverage unless that technology or its application fulfills the definition of "experimental, investigational or unproven" contained in 8.325.6 NMAC.

**J. Evaluation of the UM process:** The MCO/SE shall evaluate member and provider satisfaction with the UM process based on member and provider satisfaction survey results. The MCO/SE shall forward the evaluation results to HSD.

**K. HSD access:** HSD shall have access to the MCO/SE's UM review documentation on request. [8.305.8.13 NMAC - Rp 8 NMAC 4.MAD.606.7.4, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.11 NMAC, Section 9, effective July 1, 2008.

### 8.305.11.9 REIMBURSEMENT FOR MANAGED CARE:

#### A. Payment for services:

HSD shall make actuarially sound payments under capitated risk contracts to the designated MCO/SE. Rates, whether set by HSD, or negotiated between HSD and the MCO/SE are considered confidential. Rates shall be appropriate for the medicaid populations to be covered and the services to be furnished under the contract. The MCO/SE shall be responsible for the provision of services for members during the month of capitation. Medicaid members shall not be liable for debts incurred by an MCO/SE under the MCO's or SE's managed care contract for providing health care to medicaid members. This shall include, but not be limited to:

(1) the MCO's/SE's debts in the event of the MCO's/SE's insolvency;

(2) services provided to the member, that are not included in the medicaid benefit package and for which HSD does not pay the MCO/SE, e.g., [enhanced] value added services;

(3) when the MCO/SE does not pay the health care provider that furnishes the services under contractual, referral, or other arrangement;

(4) payments for covered services furnished under contract, referral, or other arrangement to the extent that those payments are in excess of the amount that the member would owe if the MCO/SE provided the service directly; and

(5) if an MCO/SE member loses eligibility for any reason and is reinstated as eligible by HSD before the end of the month, the MCO/SE shall accept a retro capitation payment for that month of eligibility and assume financial responsibility for all medically necessary covered benefit services supplied to the member.

**B. Capitation disbursement requirements:** HSD shall pay a capitated amount to the MCO/SE for the provision of the managed care benefit package at specified rates. The monthly rate is based on actuarially sound capitation rate cells. The MCO/SE shall accept the capitation rate paid each month by HSD as payment in full for all services to be provided pursuant to the agreement, including all administrative costs associated therewith. HSD/MAD will calculate or verify the MCO/SE's income at the end of the state fiscal year to determine if the extent was expended on the services required under the contract utilizing reported information and the department of insurance reports. Administrative costs, to be no higher than the allowable percent, including all MCO/SE-delegated entities (if applicable), and other financial information will be monitored. The MCO/SE does not have the option of deleting benefits from the medicaid defined benefit package. Should the MCO/SE not meet the required administrative or direct services costs within the terms of the contract,

sanctions or financial penalties may be imposed.

#### C. Payment time frames:

Clean claims as defined in Subsection L of 8.305.1.7 NMAC, *Clean Claim*, shall be paid by the MCO/SE to contracted and non-contracted providers according to the following timeframe: 90[~~%~~] percent within 30 days of the date of receipt and 99[~~%~~] percent within 90 days of the date of receipt, as required by federal guidelines in the Code of Federal Regulations, Section 42 CFR 447.45. The date of receipt is the date the MCO/SE first receives the claim either manually or electronically. The MCO/SE is required to date stamp all claims on the date of receipt. The date of payment is the date of the check or other form of payment. An exception to this rule may be made if the MCO/SE and its providers, by mutual agreement, establish an alternative payment schedule. However, any such alternative payment schedule shall first be incorporated into the contract between HSD and the MCO/SE. The MCO/SE shall be financially responsible for paying all claims for all covered emergency and post-stabilization services that are furnished by non-contracted providers, at no more than the fee-for-service rate, including medically or clinically necessary testing to determine if a physical or behavioral health emergency exists.

(1) An MCO/SE shall pay contracted and noncontracted providers interest on the MCO's/SE's liability at the rate of 1 ½[ ~~%~~] percent per month on the amount of a clean claim (based upon the current medicaid fee schedule) submitted by the participating provider and not paid within 30 days of the date of receipt of an electronic claim and 45 days of receipt of a manual claim.

Interest shall accrue from the 31<sup>st</sup> day for electronic claims and from the 46<sup>th</sup> day for manual claims. The MCO/SE shall be required to report the number of claims and the amount of interest paid, on a timeframe determined by HSD/MAD.

(2) No contract between the MCO/SE and a participating provider shall include a clause that has the effect of relieving either party of liability for its actions or inactions.

(3) If the MCO/SE is unable to determine liability for, or refuses to pay, a claim of a participating provider within the times specified above, the MCO/SE shall make a good-faith effort to notify the participating provider by fax, electronic or other written communication within 30 days of receipt of the claim, stating specific reasons why it is not liable for the claim or request specific information necessary to determine liability for the claim.

#### D. Rate setting:

Capitation rates paid by HSD to the MCO/SE for the provision of the managed care medicaid benefit package shall be cal-

culated through actuarial analysis, be actuarially sound and meet the standards set by 42 CFR 438.6(c).

**E. Payment on risk basis:** The MCO/SE is at risk of incurring losses if its costs of providing the managed care medicaid benefit package exceed its capitation payment. HSD shall not provide retroactive payment adjustments to the MCO/SE to reflect the actual cost of services furnished by the MCO/SE.

**F. Change in capitation rates:** HSD shall review the capitation rates 12 months from the effective date of the contract and annually thereafter. HSD may adjust the capitation rates based on factors such as the following: changes in the scope of work; CMS requiring a modification of the state's waiver; if new or amended federal or state laws or regulations are implemented; inflation; or if significant changes in the demographic characteristics of the member population occur.

**G. Solvency requirements and risk protections:** An MCO/SE that contracts with HSD to provide medicaid physical or behavioral health services shall comply with, and be subject to, all applicable state and federal laws and regulations, including solvency and risk standards. In addition to requirements imposed by state and federal law, the MCO/SE shall be required to meet specific medicaid financial requirements and to provide to HSD the information and records necessary to determine the MCO's/SE's financial condition. Requests for information and records shall be delivered to HSD, at no cost to HSD, in a reasonable time after the date of request or as specified in the contract.

(1) **Reinsurance:** An MCO participating in medicaid managed care shall purchase reinsurance at a minimum of [~~one million dollars (\$1,000,000.00)~~] \$1,000,000.00 in reinsurance protection against financial loss due to outlier (catastrophic) cases. The MCO shall document for HSD that reinsurance is in effect through the term of the contract and that the amount of reinsurance is sufficient to cover probable outlier cases or overall member utilization at an amount greater than expected. Pursuant to 42 CFR 438.6(e)(5), contract provisions for reinsurance, stop-loss limits, or other risk sharing methodologies shall be computed on an actuarially sound basis.

(2) **Third party liability (TPL):** [~~By federal law medicaid is the payer of last resort.~~] The MCO/SE shall be responsible for identifying a member's third party coverage and coordinating of benefits with third parties as required by federal law. The MCO/SE shall inform HSD when a member has other health care insurance coverage. The MCO shall have the sole right of sub-

rogation, for [~~twelve (12)~~] 12 months, from when the MCO incurred the cost on behalf of the members, to initiate recovery or to attempt to recover any third-party resources available to medicaid members and shall make records pertaining to third party collections (TPL) for members available to HSD/MAD for audit and review. If the MCO has not initiated recovery or attempted to recover any third-party resources available to medicaid members within [~~twelve (12)~~] 12 months, HSD will pursue the member's third party resources. The MCO/SE shall provide to HSD for audit and review all records pertaining to TPL collections for members.

(3) **Fidelity bond requirement:** The MCO/SE shall maintain a fidelity bond in the maximum amount specified under the Insurance Code.

(4) **Net worth requirement:** The MCO/SE shall comply with the net worth requirements of the Insurance Code.

(5) **Solvency cash reserve requirement:** The MCO/SE shall have sufficient reserve funds available to ensure that the provision of services to medicaid members is not at risk in the event of MCO/SE insolvency.

(6) **Per enrollee cash reserve:** The MCO/SE shall maintain three [~~(3)~~] percent of the monthly capitation payments per member with an independent trustee during each month [~~of the first year~~] of the agreement. HSD shall adjust this cash reserve requirement annually, or as needed, based on the number of the MCO's/SE's members, or the failure of the MCO/SE to maintain a cash reserve equal to three percent, and shall notify the MCO/SE of the cash reserve requirement. Each MCO/SE shall maintain its own cash reserve account. This account may be accessed solely for payment for services to the MCO's/SE's members in the event that the MCO/SE becomes insolvent. Money in the reserve account remains the property of the MCO/SE, and any interest earned (even if retained in the account) shall be the property of the MCO/SE.

**H. Inspection and audit for solvency requirements:** The MCO/SE shall meet all requirements for state licensure with respect to inspection and auditing of financial records. The MCO/SE shall provide to HSD or its designee all financial records required by HSD. HSD, or its designees may inspect and audit the MCO's/SE's financial records at least annually or at HSD discretion.

**I. Special payment requirements:** This section lists special payment requirements by provider type.

(1) **Reimbursement for FQHCs:** Under federal law, FQHCs shall be reimbursed at 100[%] percent of reasonable cost under a medicaid fee-for-service or man-

aged care program. The FQHC may waive its right to 100[%] percent of reasonable cost and elect to receive a rate negotiated with the MCO/SE. HSD shall provide a discounted wrap-around payment to FQHCs that have waived a right to 100[%] percent reimbursement of reasonable cost from the MCO/SE.

(2) **Reimbursement for providers furnishing care to Native Americans:** If an Indian health service (IHS) or tribal 638 provider delivers services to an MCO/SE member who is Native American, the MCO/SE shall reimburse the provider at the rate established by the office of management and budget (OMB) for specified services for the IHS facilities [~~or the medicaid fee for service rate for all other services or at a fee negotiated between the provider and the MCO/SE~~] except as otherwise specified in writing by HSD.

(3) **Reimbursement for family planning services:** The MCOs shall reimburse out-of-network family planning providers for services provided to MCO members at a rate at least equal to the medicaid fee-for-service rate for the provider type.

(4) **Reimbursement for women in the third trimester of pregnancy:** If a woman in the third trimester of pregnancy at the time of her enrollment in managed care has an established relationship with an obstetrical provider and desires to continue that relationship and the provider is not contracted with the MCO, the MCO shall reimburse the out-of-network provider for care directly related to the pregnancy, including delivery and a six-week post-partum visit.

(5) **Reimbursement for members who disenroll while hospitalized:** If a medicaid member is hospitalized at the time of disenrollment, the organization MCO/SE or FFS exempt, which was originally responsible for the hospital inpatient placement, shall remain financially responsible for payment of all covered inpatient facility and professional services from the date of admission to the date of discharge, or upon transfer to a lower level of care. Upon discharge, the member will then become the financial responsibility of the organization receiving capitation payments.

(6) **Sanctions for noncompliance:** The department may impose financial penalties or sanctions against an MCO/SE that fails to meet the financial requirements specified in this section or additional requirements specified in the terms of the medicaid managed care contract or federal medicaid law.

**J. Recoupment payments:** HSD shall recoup payments for MCO members who are incorrectly enrolled with more than one MCO, including members categorized as newborns or



X5; payments made for MCO/SE members who die prior to the enrollment month for which payment was made; or payments to the MCO/SE for members whom HSD later determines were not eligible for medicaid during the enrollment month for which payment was made. Any duplicate payment identified by either the MCO/SE or HSD shall be recouped upon identification. In the event of an error, which causes payment(s) to the MCO/SE to be issued by HSD, HSD shall recoup the full amount of the payment. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the ~~thirtieth~~ (30<sup>th</sup>) 30<sup>th</sup> day following the notice. Any process that automates the recoupment procedures shall be discussed in advance by HSD and the MCO/SE and documented in writing, prior to implementation of the new automated recoupment process. The MCO/SE has the right to dispute any recoupment action in accordance with contractual provisions.

K. HSD shall pay interest at 9[%] percent per annum on any capitation payment due to the MCO/SE that is more than 30 days late. No interest or penalty shall accrue for any other late payments or reimbursements.

L. HSD may initiate alternate payment methodology for specified program services or responsibilities. [8.305.11.9 NMAC - Rp 8 NMAC 4.MAD.606.10, 7-1-01; A, 7-1-04; A, 7/1/05; A, 9-1-06; A, 7-1-07; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.12 NMAC, Section 12, effective July 1, 2008.

**8.305.12.12 APPEALS:** An appeal is a request for review by the MCO/SE of an MCO/SE action.

A. An 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/SE to provide services in a timely manner, as defined by HSD; or

(5) the failure of the MCO/SE to complete the authorization request in a timely manner as defined in 42 CFR 438.408.

B. **Notice of MCO/SE**

**action:** The MCO/SE shall mail a notice of action to the member or provider within 10 days of the date of the action 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 that may result in member financial liability require immediate notification. The notice shall contain, but not be limited to, the following:

(1) the action the MCO/SE 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/SE action through the MCO/SE;

(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;

(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/SE action within 90 calendar days of receiving the MCO/SE's notice of action. The legal guardian of the member for a minor or an incapacitated adult, a representative of the member as designated in writing to the MCO/SE, 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/SE has 30 calendar days from the date the initial oral or written appeal is received by the MCO/SE to resolve the appeal. The MCO/SE 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/SE shall have a process in place that ensures that an oral or written 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 shall be followed by a written appeal within 10 calendar days that is signed by the member. The MCO/SE shall use its best efforts to assist members as needed with the written appeal and may continue to process the appeal.

F. Within five working days of receipt of the appeal, the MCO/SE shall provide the grievant with written notice that the appeal has been received and the expected date of its resolution. The MCO/SE shall confirm in writing receipt of oral appeals, unless the member or the provider requests an expedited resolution.

G. The MCO/SE may extend the 30-day timeframe by 14 calendar days if the member requests the extension, or the MCO/SE 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/SE shall 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/SE shall provide the member or the member's representative a reasonable opportunity to present evidence of the facts or law, in person as well as in writing.

I. The MCO/SE shall provide the member or the representative the opportunity, before and during the appeals process, to examine the member's case file, including medical or clinical records (subject to HIPAA requirements), and any other documents and records considered during the appeals process. The MCO/SE 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/SE shall provide written notice within the 30-calendar-day timeframe for resolutions to the member or the provider, if the provider filed the appeal.

(1) The written notice of the appeal resolution shall include, but not be limited to, the following information:

(a) the results 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 shall 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 continuing benefits if the hearing decision upholds the MCO/SE's action.

K. The MCO/SE may continue benefits while the appeal or the HSD fair hearing process is pending.

(1) The MCO/SE shall 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 or the member 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/SE shall provide benefits until one of the following occurs:

(a) the member withdraws the appeal;

(b) 13 days have passed since the date of the resolution letter, 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/SE's action is upheld, the MCO/SE 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 431.230(b).

(4) If the MCO/SE or HSD reverses a decision to deny, limit, or delay services, and these services were not furnished while the appeal was pending, the MCO/SE shall authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires.

(5) If the MCO/SE 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/SE shall pay for these services.

[8.305.12.12 NMAC - Rp 8.305.12.12 NMAC, 7-1-04; A. 7-1-05; A, 9-1-06; A, 7-1-07; A, 7-1-08]

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

This is an amendment to 8.305.16 NMAC, Section 9, effective July 1, 2008.

**8.305.16.9 MEMBER TRANSITION OF CARE:** The MCO/SE 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/SE shall actively assist members, in particular ISHCN. Members transitioning from institutional levels of care such as hospitals, nursing homes, residential treatment facilities or ICF/MRs back to community services with transition of care needs shall be offered care coordination services as indicated. Medicaid-eligible clients may initially receive physical and behavioral health services under fee-for-service medicaid prior to enrollment in managed care. During the member's medicaid eligibility period, enrollment status with a particular MCO may change and the member may switch enrollment to a different MCO. Certain members covered under managed care may become exempt and other members may lose their medicaid eligibility while enrolled in an MCO/SE. A member changing from MCO to MCO, fee-for-service to managed care coverage and vice versa shall continue to receive medically necessary services in an uninterrupted manner.

**A. Member transition:**

The MCO/SE 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 MCO.

(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, and the SE shall be notified.

(2) The MCO shall have policies and procedures covering the transition into the MCO of an individual member, which shall include member and provider education about the MCO and the review and update of existing courses of treatment. The SE shall be notified and coordination of care shall occur.

(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. The MCO shall have written policies and procedures to facilitate a smooth transition of a member to another MCO when a member chooses and is approved to switch to another MCO.

(4) The MCO/SE shall have policies and procedures regarding provider responsibility for discharge planning upon the member's discharge from an inpatient or residential treatment facility, and the MCO/SE shall help coordinate for a seamless transition of post-discharge care.

**B. Prior authorization**

**and provider payment requirements:**

(1) For newly enrolled members, the MCO/SE shall honor all prior authorizations granted by HSD through its contractors or the CLTS MCO for the first 30 days of enrollment or until the MCO/SE has made other arrangements for the transition of services. Providers who delivered services approved by HSD through its contractors shall be reimbursed by the MCO/SE.

(2) For members who recently became exempt from managed care or enrolled in CLTS, HSD or the CLTS MCO shall honor prior authorization of fee-for-service covered benefits granted by the MCO/SE for the first 30 days under fee-for-service medicaid or until other arrangements for the transition of services have been made. Providers who deliver these services and are eligible and willing to enroll as medicaid fee-for-service providers shall be reimbursed by HSD.

(3) For members who had transplant services approved by HSD under fee-for-service or under CLTS, the MCO shall reimburse the providers approved by HSD or CLTS MCO if a donor organ becomes available for the member during the first 30 days of enrollment.

(4) For members who had transplant services approved by the MCO, HSD or the CLTS MCO shall reimburse the providers approved by the MCO if a donor organ becomes available for the member during the first 30 days under fee-for-service medicaid. Providers who deliver these services shall be eligible and willing to enroll as medicaid fee-for-service providers.

(5) For newly enrolled members, the MCO/SE shall pay for prescriptions for drug refills for the first 30 days or until the MCO/SE has made other arrangements. All drugs prescribed by a licensed behavioral health provider shall be paid for by the SE.

(6) For members who recently became exempt from managed care, HSD shall pay for prescriptions for drug refills for the first 30 days under the fee-for-service formulary. The pharmacy provider shall be eligible and willing to enroll as a medicaid fee-for-service provider.

(7) The MCO shall pay for DME costing \$2,000 or more, approved by the MCO but delivered to the member after disenrollment from managed care or enrollment into CLTS.

(8) HSD or the CLTS MCO shall pay for DME costing \$2,000 or more, approved by HSD or the CLTS MCO but delivered to the member after enrollment in the MCO. The DME provider shall be eligible for and willing to enroll as a medicaid fee-for-service provider. DME is not covered by the SE unless it has been prescribed by a behavioral health provider.

C. **Special payment requirement.** The MCO shall be responsible for payment of covered physical health services, provided to the member for any month the MCO receives a capitation payment. The SE shall be responsible for payment of covered behavioral health services provided to the member for any month the SE receives a capitation payment.

D. **Claims processing and payment:** In the event that an MCO's/SE's contract with HSD or the collaborative has ended, is not renewed or is terminated, the MCO/SE shall remain responsible for processing and paying claims for services delivered through the contract period, but submitted after the MCO's/SE's contract has ended.

(1) The MCO/SE 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/SE shall allow six months to process claims for services provided prior to the contract termination date.

(3) The MCO/SE shall continue to meet timeframes established for processing all claims.

[8.305.16.9 NMAC - N, 7-1-01; A, 7-1-04; A, 7-1-05; A, 7-1-07; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.17 NMAC, Section 9, effective July 1, 2008. The part name is also amended.

### PART 17 ~~[ENHANCED SERVICES]~~ VALUE ADDED SERVICES

#### 8.305.17.9 ~~[ENHANCED SERVICES]~~ VALUE ADDED SERVICES:

The MCO/SE shall offer members ~~[enhanced services]~~ value added services. The cost of these services cannot be included when HSD determines the payment rates. ~~[Enhanced services]~~ Value added services are not included in the managed care medicaid benefit package. ~~[Enhanced services]~~ Value added services shall not be construed as medicaid funded services, benefits, or entitlements under the NM Public Assistance Act. ~~[Enhanced services]~~ Value added services shall be approved by and reported to HSD. The MCO/SE shall work with HSD to identify codes to be used for ~~[enhanced services]~~ value added services.

~~[Enhanced services]~~ Value added services shall be direct services, not administrative in nature unless approved by HSD.

A. **Potential ~~[enhanced services]~~ value added services (MCO only):** The following are suggested enhanced services:

(1) anticipatory guidance provided as a part of the normal course of office visits or a health education program, including behavioral health;

(2) child birth education, parenting skills classes;

(3) child abuse and neglect prevention programs;

(4) stress control programs;

(5) car seats for infants and children;

(6) culturally-traditional indigenous healers and treatments;

(7) smoking cessation programs;

(8) weight loss and nutrition programs;

(9) violence prevention services;

(10) substance abuse prevention and treatment, beyond the benefit package; and

(11) respite care for care givers.

B. **Potential ~~[enhanced services]~~ value added services (SE only):**

The SE shall strategically determine a continuum of services, identify ~~[enhanced services]~~ value added services needs and work with the collaborative to develop ~~[enhanced services]~~ value added services. ~~[Enhanced services]~~ Value added services should promote evidence based practices that support recovery and resiliency.

C. **Member specific ~~[enhanced services]~~ value added services:**

Other services may be made available to members based on the MCO/SE's discretion. Eligibility for ~~[enhanced services]~~ value added services may be based upon a set of assessment criteria to be employed by the MCO/SE.

[8.305.17.9 NMAC - N, 7-1-07; A, 7-1-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.315.5 NMAC, Sections 3, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17, effective July 1, 2008.

#### 8.315.5.3 STATUTORY AUTHORITY:

The New Mexico medicaid program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended and by ~~[the state human services department pursuant to state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamph. 1994)]~~ state statute. See NMSA

1978, Section 27-2-12 et seq. (2006).

[8.315.5.3 NMAC - N, 10-1-05; A, 7-1-08]

8.315.5.6 **OBJECTIVE:** The objective of these regulations is to provide policies for the service portion of the New Mexico ~~[medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.]~~ medical assistance programs.

[8.315.5.6 NMAC - N, 10-1-05; A, 7-1-08]

8.315.5.8 **MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of ~~[medicaid eligible individuals]~~ eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.

[8.315.5.8 NMAC - N, 10-1-05; A, 7-1-08]

#### 8.315.5.9 ASSERTIVE COMMUNITY TREATMENT (ACT) SERVICES:

~~[The New Mexico medicaid program (medicaid)]~~ MAD pays for medically necessary health services furnished to eligible recipients. To help ~~[New Mexico]~~ eligible recipients receive necessary services, ~~[the New Mexico medical assistance division (MAD)]~~-MAD pays for covered professional and peer mental health services [42 CFR SS 440.40, 440.60(a) and 441.57]. ~~[This part describes eligible providers, covered services, service limitations and general reimbursement methodology.]~~

8.315.5.9 NMAC - N, 10-1-05; A, 7-1-08]

8.315.5.10 **ELIGIBLE PROVIDERS:** ~~[Upon approval of New Mexico medical assistance program provider participation agreements by MAD, the following providers are eligible to be reimbursed for providing mental health peer and professional services.~~

A. ~~Political subdivisions of the state of New Mexico who have a contract with the medical assistance division to perform ACT. The provider must be able to contract with or employ qualified personnel to provide the service. The provider or the contractor must demonstrate compliance with administrative, financial, clinical, quality improvement and information services infrastructure standards established by the medical assistance division or be accredited by a national accrediting body for medical or behavioral health services providers.~~

B. ~~Once enrolled, providers are advised as to where a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD can be obtained through internet access. Providers who do not have internet access are advised to con-~~

tact MAD or its designee to receive this information. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

C. ACT services must be provided by a team of ten to twelve individuals. Each team must have a designated team leader. Individuals on this team shall have sufficient individual competence, professional qualifications and experience to provide service coordination; crisis assessment and intervention; symptom assessment and management; individual counseling and psychotherapy; prescription, administration, monitoring and documentation of medications; substance abuse treatment; work-related services; activities of daily living services; support services or direct assistance to ensure that individuals obtain the basic necessities of daily life; and education, support, and consultation to individuals' families and other major supports.

D. Each team staff member must successfully be certified as trained according to standards for ACT as developed by the behavioral health services division of the New Mexico department of health. The approved training will focus on developing staff's competencies for delivering assertive community treatment services according to the most recent evidenced-based practices. Each assertive community treatment team shall have sufficient numbers of staff to provide treatment, rehabilitation, crisis and support services 24 hours a day, seven days per week.

E. Each assertive community treatment team shall have a staff-to-individual ratio in keeping with ACT evidence-based practice standards as approved by the behavioral health services division of the New Mexico department of health.

F. Each assertive community treatment team shall include at least one psychiatrist; two nurses, one of whom shall be a registered nurse; one other mental health professional; one substance abuse professional; one employment specialist; at least one peer provider; and one administrative staff person. The service recipient shall be considered a part of the team for decisions impacting his services.]

Upon the approval of a New Mexico MAD provider participation agreement by MAD or its designee, a licensed practitioner, agency or facility that meets applicable requirements is eligible to be reimbursed for furnishing covered services to an eligible program recipient. A provider must be enrolled before submitting a claim for payment to the appropriate MAD claims processing contractor. MAD makes available on the HSD/MAD website, on other program-specific, or in hard copy format, information necessary to participate in health

care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. Once enrolled, a provider receives instructions on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the manuals, billing and utilization review instructions, and other pertinent materials and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement, a provider is bound by the provisions of the MAD provider participation agreement.

A. The provider must demonstrate compliance with administrative, financial, clinical, quality improvement and information services infrastructure standards established by MAD or its designee, including compliance and outcomes consistent with the ACT fidelity model. (See *New Mexico interagency behavioral health service requirement and utilization for more specific guidance.*)

B. ACT services must be provided by an agency that includes a team of ten to twelve individuals. Each team must have a designated team leader. Individuals on this team shall have sufficient individual competence, professional qualifications and experience to provide service coordination; crisis assessment and intervention; symptom assessment and management; individual counseling and psychotherapy; prescription, administration, monitoring and documentation of medications; substance abuse treatment; work-related services; activities of daily living services; support services or direct assistance to ensure that individuals obtain the basic necessities of daily life; and education, support, and consultation to individuals' families and other major supports. The agency must coordinate their ACT services with local hospitals, local crises units, local law enforcement agencies, local behavioral health agencies and consider referrals from social service agencies.

C. Each team staff member must successfully be certified as trained according to standards for ACT as developed by HSD or its authorized agents. The approved training will focus on developing staff competencies for delivering ACT services according to the most recent ACT evidenced-based practices. Each ACT team shall have sufficient numbers of staff to provide treatment, rehabilitation, crisis and support services 24 hours a day, seven days per week.

D. Each ACT team shall have a staff-to-individual ratio in keeping with ACT evidence-based practice stan-

dards as approved by MAD or its designee.

E. Each ACT team shall include:

- (1) at least one board-certified or board-eligible psychiatrist;
- (2) two licensed nurses, one of whom shall be a registered nurse;
- (3) at least one other independently licensed mental health professional;
- (4) at least one licensed substance abuse professional;
- (5) at least one employment specialist;
- (6) at least one certified peer provider;
- (7) one administrative staff person; and
- (8) the eligible recipient shall be considered a part of the team for decisions impacting his/her services.

[8.315.5.10 NMAC - N, 10-1-05; A, 7-1-08]

### **8.315.5.11 PROVIDER RESPONSIBILITIES:**

[A. Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies.*

B. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. See 8.302.1.12 NMAC for recipients whose medicaid coverage is restricted and 8.302.2.12 NMAC for dual eligible medicaid recipients.

C. Providers must maintain records that are sufficient to fully disclose the extent and medically necessary nature of the services provided to recipients. See 8.302.1 NMAC, *General Provider Policies.*] A provider who furnishes services to a medicaid or other health care program eligible recipient must comply with all federal and state laws and regulations relevant to the provision of services as specified in the MAD provider participation agreement. A provider must also conform to MAD program regulations and instructions as specified in this manual, its appendices and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services.

[8.315.5.11 NMAC - N, 10-1-05; A, 7-1-08]

**8.315.5.12 ELIGIBLE RECIPIENTS:** [Assertive community treatment services are provided to individuals aged eighteen (18)]

A. ACT services are provided to individuals aged 18 and older who have a diagnosis of severe mental illness

(including schizophrenia, schizoaffective disorder, bipolar disorder or psychotic depression) who have severe problems completing activities of daily living, who have a significant history of involvement in behavioral health services, and who have experienced repeated hospitalizations ~~and/or~~ or incarcerations due to mental illness.

B. A co-occurring diagnosis of substance abuse shall not exclude an individual from eligibility for the program. [8.315.5.12 NMAC - N, 10-1-05; A, 7-1-08]

### 8.315.5.13 COVERAGE CRITERIA:

A. ~~Medicaid~~ MAD covers medically necessary ~~assertive community treatment~~ ACT services required by the condition of the eligible recipient.

B. This culturally sensitive service, delivered by an appropriately constituted team, provides therapeutic interventions that address the functional problems associated with the most complex ~~and/or~~ or pervasive conditions of the identified population. These interventions are strength-based and focused on promoting symptom stability; increasing the eligible recipient's ability to cope and relate to others; and enhancing the highest level of functioning in the community, including learning, working and recreation, and making informed choices.

C. Interventions may address adaptive skill areas such as: housing; school, work and training opportunities; daily activities; health and safety; medication support; harm reduction; money management and entitlements; promotion of individual recovery processes; relapse prevention; and service planning and coordination.

D. All services must be furnished within the limits of ~~medicaid~~ MAD benefits, within the scope and practice of the eligible provider's respective profession as defined by state law, and in accordance with applicable federal, state, and local laws and regulations.

E. The ACT therapy model is based on empirical data and evidence-based interventions that target specific behaviors with an individualized treatment plan. Specialized therapeutic and rehabilitative interventions falling within the fidelity model of ACT are used to address specific areas of need, such as experiences of repeated hospitalization or incarcerations, severe problems completing activities of daily living and who have a significant history of involvement in behavioral health services.

[E.] E. **Medical necessity:** All services must be provided in compliance with the ~~medicaid~~ MAD definition of medical necessity as found in current ~~med-~~

~~icaid~~ MAD regulations.

[8.315.5.13 NMAC - N, 10-1-05; A, 7-1-08]

### 8.315.5.14 COVERED SERVICES:

A. ~~Assertive community treatment~~ ACT is a voluntary medical, comprehensive case management and psychosocial intervention program provided on the basis of the following principles:

(1) the service is available ~~twenty-four~~ 24 hours a day, seven days a week;

(2) the service is provided by an interdisciplinary ~~team which may include trained personnel such as psychiatrists, nurses, nurse practitioners, case managers, master's level behavioral health professionals, qualified peer providers and clerical support staff,~~ ACT team that includes trained personnel as defined in Subsections D and E of 8.315.5.10 NMAC;

(3) an individualized treatment plan and supports are developed;

(4) at least 90% of services are delivered as community-based, non-office-based outreach services;

(5) an array of services are provided based on individual patient medical need;

(6) the service is consumer-directed;

(7) the service is recovery-oriented;

(8) the team maintains a low staff-to-patient ratio, following the ACT evidence-based model guidelines;

(9) mobilized crisis intervention is provided in various environments such as homes, schools, jails, homeless shelters, streets and other locations; and

(10) the team is not just a consortium of mental health specialists, but includes collaborative assessment and treatment planning for each service eligible recipient; cross-training of team members; daily team meetings; use of an open office format to promote team communication; and a team approach to each service eligible recipient's care and services; the team will assist the ~~individual~~ eligible recipient to access other appropriate services in the community that are not funded by ~~medicaid~~ MAD.

B. **Quality measurement:** Program success is evaluated based on outcomes which may include but are not limited to: improved engagement by ~~patients~~ eligible recipients in medical and social services; decreased rates of incarceration; decreased rates of hospitalization; decreased use of alcohol or illegal drugs; increased housing stability; increased relationships of ~~patients~~ eligible recipients with families; and increased employment; and increased attainment of goals self-identified by the service eligible recipient for his own life. Fidelity to the specific evidence-

based ACT service ~~model~~ will also be measured to assure that ACT, rather than some other form of intensive case management, is being provided.

C. ACT services must be provided to the eligible recipient by the treatment team members.

[8.315.5.14 NMAC - N, 10-1-05; A, 7-1-08]

### 8.315.5.15 NON COVERED SERVICES:

ACT services are subject to the limitations and coverage restrictions that exist for other ~~medicaid~~ MAD services. See 8.301.3 NMAC, *General Noncovered Services*. No other psychiatric, mental health nursing, therapeutic, substance abuse or crisis services will be concurrently reimbursed for the ACT service eligible recipient except medically necessary medications and hospitalizations.

[8.315.5.15 NMAC - N, 10-1-05; A, 7-1-08]

### 8.315.5.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:

All ~~medicaid~~ MAD services ~~are~~ may be subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior ~~approval~~ authorization and claims processing.

A. **Prior authorization:** Services or procedures require prior authorization from MAD or its designee. Services may be reviewed retrospectively. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process. See Subsection A of 8.311.2.16 NMAC, *Covered Emergency Services* [MAD-721.71].

B. **Eligibility determination:** Prior authorization of services does not guarantee that individuals are eligible for Medicaid. Providers must verify that individuals are eligible for ~~medicaid~~ for a specific program at the time services are furnished and determine if ~~medicaid recipients have~~ the eligible recipient has other health insurance.

C. **Reconsideration:** Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]. [8.315.5.16 NMAC - N, 10-1-05; A, 7-1-08]

### 8.315.5.17 REIMBURSEMENT:

A. ACT service providers must submit claims for reimbursement on

the ~~[HCFA-1500]~~ HCFA/CMS claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing.

B. Reimbursement to providers for covered services is made at the lesser of the following:

(1) the provider's billed charge; or

(2) the MAD fee schedule for the specific service or procedure for the provider, as established after considering cost data.

(a) The provider's billed charge must be their usual and customary charge for services.

(b) "Usual and customary charge" refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service.

~~[C. ACT services must be provided directly to the recipient by the treatment team members.]~~

[8.315.5.17 NMAC - N, 10-1-05; A, 7-1-08]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department repeals its rule 6.22.3 NMAC, *Charter School Stimulus Fund*, filed 10/31/2000 effective 6/30/2008.

6.30.7 NMAC, *Dual Credit*, filed 12-14-2007 is repealed and replaced by 6.30.7 NMAC, *Dual Credit*, effective 06-30-2008.

The Public Education Department (PED) repeals 6.69.3 NMAC, *Performance Evaluation Requirements for Administrators, and Counselors*, effective 07-01-08.

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 30 EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS PART 7 DUAL CREDIT

**6.30.7.1 ISSUING AGENCY:** New Mexico Public Education Department [6.30.7.1 NMAC - Rp, 6.30.7.1 NMAC, 06/30/08]

**6.30.7.2 SCOPE:** This rule applies to public school districts (high schools, charter schools and state-supported schools), high school students who attend

secondary schools, and public postsecondary institutions in New Mexico. Districts and public postsecondary institutions are required to implement rules no later than the beginning of the 2008-2009 school year.

[6.30.7.2 NMAC - Rp, 6.30.7.2 NMAC, 06/30/08]

**6.30.7.3 STATUTORY AUTHORITY:** Section 22-2-1, 22-2-2, 9-25-8, 21-1-1.2 NMSA 1978.

[6.30.7.3 NMAC - Rp, 6.30.7.3 NMAC, 06/30/08]

**6.30.7.4 DURATION:** Permanent  
[6.30.7.4 NMAC - Rp, 6.30.7.4 NMAC, 06/30/08]

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

[6.30.7.5 NMAC - Rp, 6.30.7.5 NMAC, 6/30/08]

**6.30.7.6 OBJECTIVE:** The purposes of dual credit are:

A. to increase educational opportunities for high school students, and

B. to increase the overall quality of instruction and learning available through secondary schools.

[6.30.7.6 NMAC - Rp, 6.30.7.6 NMAC, 6/30/08]

**6.30.7.7 DEFINITIONS:**

A. "ACT" is the academic competency test.

B. "Agreement" is the dual credit master agreement.

C. "Classification of instructional program" or "CIP" is a taxonomic coding scheme that contains titles and descriptions of instructional programs, primarily at the postsecondary level. The CIP was originally developed to facilitate the United States department of education national center for education statistics' collection and reporting of postsecondary degree completions, by major field of study, using standard classifications that capture the majority of program activity.

D. "Common core" refers to the thirty-five (35) semester-hour common core of general education lower-division courses eligible for transfer to other New Mexico postsecondary institutions as per 5.55.3.9 NMAC.

E. "Concurrent enrollment" refers to enrollment of high school students in courses at the postsecondary level that are not designated as dual credit. This includes courses not listed within the dual credit master agreement between the eligible district and postsecondary institu-

tion. Students who are concurrently enrolled may also be enrolled in the dual credit program if they meet eligibility requirements as specified in 5.55.4 NMAC and 6.30.7 NMAC.

F. "Core course" means courses required for high school graduation as defined in 22-13-1.1 NMSA, 1978, excluding electives.

G. "Developmental course" refers to courses with CIP codes of 32.0101, 32.0107 or 32.0199 that fall within the basic skills or career exploration/awareness skills categories.

H. "District" as defined in 6.30.2.9 NMAC means a public school district, including a charter school or charter school district, and a state supported educational institution and a state-chartered school.

I. "Dual credit council" is an advisory group consisting of staff of the public education department and higher education department that issues recommendations to the secretaries of the public education and higher education departments regarding dual credit issues outside of the scope of the agreement.

J. "Dual credit program" means a program that allows high school students to enroll in college-level courses offered by a postsecondary institution that may be academic or career technical but not remedial or developmental, and simultaneously to earn credit toward high school graduation and a postsecondary degree or certificate.

K. "Elective course" means courses defined and approved as such by local school boards.

L. "FERPA" is the Family Educational Rights and Privacy Act [20 U.S. Code 1232g].

M. "Form" is the dual credit request form.

N. "General fees" as defined in 5.7.18 NMAC and Subsection B of Section 21-1-4-NMSA 1978 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.

O. "Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in accordance with 34 CFR Secs. 300.320 through 300.324.

P. "Postsecondary institu-

tion” refers to a public postsecondary educational institution operating in the state, including a community college, branch community college, technical vocational institute, and four-year educational institution.

Q. “Remedial course” refers to courses with CIP codes of 32.0104 or 32.0108 that fall within the numeracy and computational skills, precollegiate mathematics skills, precollegiate reading skills, precollegiate writing skills, or communications skills categories.

[6.30.7.7 NMAC - Rp, 6.30.7.7 NMAC, 06/30/08]

### 6.30.7.8 UNIFORM MASTER AGREEMENT.

A. The agreement specifies the means by which the state will provide equal opportunities to all public high school students who wish to participate in the dual credit program.

B. Districts and postsecondary institutions providing dual credit programs shall complete the agreement and the district shall submit the completed agreement to the public education department.

C. A completed agreement shall contain signatures from all parties and includes an appendix developed collaboratively by the district and postsecondary institution that specifies eligible dual credit courses.

D. Districts may complete agreements with multiple postsecondary institutions.

E. A fully executed copy of each agreement shall be submitted by the district to the public education department within 10 days of approval.

F. The agreement:

(1) specifies eligible courses, academic quality of dual credit courses, student eligibility, course approval, course requirements, required content of the form, state reporting, liabilities of parties, and student appeals; and

(2) states the roles, responsibilities, and liabilities of the district, the postsecondary institution, student, and the student’s family.

G. Duties and responsibilities of the postsecondary institution. The postsecondary institution shall:

(1) designate a representative to review and sign the completed form with the understanding that only forms endorsed by all parties shall constitute a dual credit approval request;

(2) determine, in collaboration with the district, the required academic standing of each student eligible to participate in the dual credit program;

(3) collaborate with the district to reach agreement on admission and registra-

tion of eligible dual credit students for the stated semester;

(4) employ a method of qualifying the student for dual credit that demonstrates that the student has the appropriate skills and maturity to benefit from the instruction requested;

(5) provide advisement to review the appropriateness of each student’s enrollment in a course prior to registration in terms of academic readiness, age requirements, and programmatic issues;

(6) provide the form to eligible students and appropriate district staff online and in hard copy;

(7) approve the form for each student on a course-by-course basis each semester based on each student’s prior coursework, career pathway, or academic readiness;

(8) provide a copy of each approved form to the appropriate district representative;

(9) provide course placement evaluation and consider a high school college readiness assessment to verify a student’s academic skill level and to ensure compliance with course prerequisites;

(10) provide information and orientation, in collaboration with the district, to the student and parent or guardian regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the postsecondary institution credits attempted in order for dual credit to be awarded;

(11) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(12) advise the parent or guardian of FERPA rules;

(13) waive all general fees for dual credit courses;

(14) waive tuition for high school students taking dual credit courses;

(15) make every effort to adopt textbooks for at least three years;

(16) provide the district, within the first thirty days of the academic term, access to each student’s official schedule of classes as verification of registration; the district shall notify the postsecondary institution if the report is in conflict with the school endorsed registration;

(17) track progress of dual credit enrolled students on the issue of academic performance and provide reports, as needed, to the district;

(18) retain the official transcript or grade report of the dual credit student that records the term of enrollment, courses/credits attempted, courses/credits com-

pleted, grades and grade point average earned;

(19) release, at the request of the student, official postsecondary institution transcripts in accordance with the postsecondary institution’s transcript request practices;

(20) provide final grades to the district for each dual credit student;

(21) deliver final grades for all dual credit students to the district with sufficient time to be included with final grades; this schedule shall be defined by the parties in the agreement and shall address the time frame appropriate for determining student graduation from high school;

(22) comply with data collection and reporting provisions in 6.30.7.12 NMAC;

(23) approve faculty for all dual credit courses;

(24) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.3 NMAC;

(25) have a student appeals process pertaining to student enrollment in dual credit programs (postsecondary institution decisions are final); and

(26) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

H. Duties and responsibilities of the district. The district shall:

(1) designate a representative to collaborate with the postsecondary institution to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(2) determine, in collaboration with the postsecondary institution, the required academic standing of each student eligible to participate in the dual credit program;

(3) collaborate with the postsecondary institution to reach agreement on admission and registration of eligible dual credit students for the stated semester;

(4) employ a method of qualifying the student for dual credit based on factors which may include academic performance review, use of next step plan, assessments, advisement and career guidance, and therefore recommend enrollment at the postsecondary institution with evidence that the student has the appropriate skills and maturity to benefit from the instruction requested;

(5) provide information and orientation to students about opportunities to participate in dual credit programs during student advisement, academic support, and formulation of annual next step plans;

(6) provide the form to eligible students and appropriate district staff online and in hard copy;

(7) approve the form for each student on a course-by-course basis each semester based on each student's prior coursework, career pathway, or academic readiness;

(8) provide information and orientation, in collaboration with the postsecondary institution, to the student and student's family regarding the responsibilities of dual credit enrollment including academic rigor, time commitments, and behavioral expectations associated with taking college courses and the importance of satisfactorily completing the college credits attempted in order for dual credit to be awarded;

(9) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(10) notify the postsecondary institution if the student's official schedule of classes is in conflict with the school endorsed registration;

(11) provide appropriate accommodations and services for special education students while the students are enrolled in dual credit classes, including academic adjustments and auxiliary aids and services for eligible students across educational activities and settings (e.g. equipping school computers with screen-reading, voice recognition or other adaptive hardware or software and providing note-takers, recording devices, or sign language interpreters, or other adaptation as required by law);

(12) inform students in need of accommodations or other arrangements of the need to speak directly with the disabilities coordinator at the postsecondary institution;

(13) work collaboratively with the postsecondary institution to submit a student's request for change in registration according to postsecondary institution policies and within officially published deadlines;

(14) make it clear to students that if they fail or withdraw from dual credit classes that they were intending to use to substitute for a high school requirement that they will have to make up those credits in order to graduate; the dual credit course grade will appear on the student high school transcript;

(15) pay the cost of the required textbooks and other course supplies for the postsecondary course the dual credit student is enrolled in through purchase arrangements with the bookstore at the postsecondary institution or other cost-efficient methods;

(16) collaborate with the postsecondary institution to offer dual credit courses

at the high school site according to district site time blocks;

(17) furnish an official high school transcript to the postsecondary institution if required by the postsecondary institution;

(18) record, unchanged, the grade given to the dual credit student by the postsecondary institution on each student high school transcript;

(19) retain educational records in accordance with New Mexico statutes and record retention regulations as per 1.20.2 NMAC;

(20) comply with data collection and reporting provisions in 6.30.7.12 NMAC;

(21) have a student appeals process pertaining to student enrollment in dual credit programs (district decisions are final); and

(22) have the right to appeal to the dual credit council on issues related to implementing the dual credit program, agreement, and rules.

I. Duties and responsibilities of the student. The student shall:

(1) qualify for dual credit courses offered in the fall, winter and summer by:

(a) being enrolled during the fall and winter in a district in one-half or more of the minimum course requirements approved by the New Mexico public education department for public school students;

(b) obtaining permission from the district representative (in consultation with the student's individualized education program team, as needed), the student's parent or guardian, and postsecondary institution representative through a fully executed form prior to enrolling in a dual credit course; and

(c) meeting postsecondary institution requirements to enroll as a dual credit student;

(2) discuss potential dual credit courses with the appropriate district and postsecondary institution staff, including postsecondary institution admission and registration requirements, course requirements, credits to be attempted, credits to be awarded, scheduling under dual credit, and implications for failure to successfully complete the course;

(3) obtain course requirements for each course, including course prerequisites, course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(4) meet the prerequisites and requirements of the course(s) to be taken;

(5) complete the form available online or in hard copy from the district or postsecondary institution;

(6) obtain approval for enrolling

in the dual credit program each semester by acquiring all necessary signatures on the form;

(7) register for courses during the postsecondary institution's standard registration periods (note: enrollments shall not be permitted after the close of posted late registration);

(8) discuss any request for a change in registration (add, drop, withdrawal) and complete all necessary forms and procedures with appropriate district and postsecondary institution staff;

(9) comply with the district and postsecondary institution student code of conduct and other institutional policies;

(10) have rights and privileges that include:

(a) the rights and privileges equal to those extended to district and postsecondary institution students, unless otherwise excluded by any section of this agreement;

(b) use of the postsecondary institution library, course-related labs and other instructional facilities, use of the postsecondary institution programs and services such as counseling, tutoring, advising, and special services for the students with disabilities, and access to postsecondary institution personnel and resources as required; and

(c) the right to appeal, in writing to the district or postsecondary institution, as applicable, any decision pertaining to enrollment in the dual credit program;

(11) return the textbooks and unused course supplies to the district when the student completes the course or withdraws from the course (subject to provisions in Subsection B of Section 22-15-10 NMSA 1978 regarding lost or damaged instructional material);

(12) arrange transportation to the site of the dual credit course; depending upon the time and course location, the student may have access to transportation through the district if the dual credit course is offered during the school day;

(13) be responsible for course-specific (e.g. lab, computer) fees;

(14) allow educational records to be retained and disseminated in accordance with the requirements of the FERPA;

(15) sign the FERPA release form, along with student parent or guardian, if applicable, in order to participate in dual credit courses; and

(16) abide by regular operating calendars, schedules and associated requirements of both the district and postsecondary institution; in instances in which the calendars are incongruent, the student is required to independently satisfy both calendar requirements and may consult with district counselors for assistance.



[6.30.7.8 NMAC - Rp, 6.30.7.8 NMAC, 06/30/08]

### 6.30.7.9 LIMITATIONS OF THE AGREEMENT.

A. With the exception of the appendix, the agreement may not be altered or modified by either party.

B. The agreement shall automatically renew for additional fiscal years unless either party notifies the other party of their intent not to renew 60 days before the end of the fiscal year.

C. Districts, in collaboration with postsecondary institutions, may modify the list of dual credit courses in the appendix of the agreement. Modifications shall be submitted to the higher education department and the public education department by the end of each semester.

[6.30.7.9 NMAC - Rp, 6.30.7.9 NMAC, 06/30/08]

### 6.30.7.10 LIABILITIES OF PARTIES.

A. Dual credit status shall neither enhance nor diminish on-campus liabilities for the district or the postsecondary institution.

B. Management of risk and liabilities shall be in accordance with the district and the postsecondary institution policies and codes of conduct.

C. Personal liabilities for the student shall be equal to those of regular postsecondary institution students.

[6.30.7.10 NMAC - Rp, 6.30.7.10 NMAC, 06/30/08]

### 6.30.7.11 ELIGIBLE COURSES.

A. Types of courses.

(1) College courses that are academic or career technical (but not remedial or developmental) and that simultaneously earn credit toward high school graduation and a postsecondary degree or certificate shall be eligible for dual credit.

(2) Dual credit courses may be taken as elective high school credits.

(3) Dual credit courses may satisfy the requirements of high school core courses when the department standards and benchmarks are met and curriculum is aligned to meet postsecondary requirements.

(4) Dual credit courses may substitute for high school core courses when the dual credit council determines there are exigent circumstances. For example, there is limited high school capacity, staff, space or scheduling and the cabinet secretaries approve the dual credit council recommendation.

(5) College courses eligible for dual credit shall meet the rigor for postsecondary institution credit and be congruent

with the postsecondary institution's academic standards.

(6) Dual credit courses offered in high school settings shall conform to college academic standards.

(7) Course requirements for high school students enrolled in dual credit courses shall be equal to those of regular college students.

B. Identifying courses.

(1) The district in collaboration with the postsecondary institution shall determine a list of academic and career technical courses eligible for dual credit for inclusion into the appendix.

(2) The appendix shall indicate whether the course is a core or elective high school course, the higher education common course number, if applicable, course subject and number, course title, location of course delivery and semesters offered.

(3) The district shall annually submit the appendix to the higher education department and the public education department; Subsection C of 6.30.7.9 NMAC still applies.

(4) The higher education department and the public education department shall post the appendix on their respective websites and update the appendix as needed.

C. Course delivery.

(1) Dual credit courses may be offered at districts, postsecondary institutions, and off-campus centers as determined by the district in collaboration with the postsecondary institution offering the courses.

(2) Dual credit courses may be delivered during or outside of regular district hours.

(3) Postsecondary institutions may offer dual credit courses via distance learning (ITV, online, hybrid, correspondence) in accordance with 5.55.4 NMAC and 6.30.7 NMAC as this option becomes available and cost-effective. All dual credit course rules apply.

(4) Districts and postsecondary institutions participating in the cyber academy shall be subject to applicable rules pertaining to it.

D. Semesters dual credit may be taken; caps for dual credit; nature of high school credit earned.

(1) Eligible students may enroll in dual credit courses year-round.

(2) There is no state limit to the number of credits a student may earn through dual credit in an academic term; however, the student must meet eligibility requirements.

(3) Unless otherwise approved by the secretaries of the higher education and public education departments, one secondary school credit shall be awarded for the successful completion of three credit hours of postsecondary institution instruction for

elective courses not comparable to existing district elective courses. If the district and postsecondary institution determine that a different ratio is warranted for a particular dual credit course comparable to district core courses in order to meet public education department standards and benchmarks, they may appeal to the council, which may recommend a different ratio to the secretaries of the public education and higher education departments. The joint decision of the public education and higher education department cabinet secretaries shall be final.

E. Dual credit council.

(1) The secretaries of the higher education department and public education department shall appoint individuals to a dual credit council consisting of six members.

(2) Council composition. The council shall consist of an equal number of higher education department and public education department staff. The higher education and public education department staff serve as council chairs in alternating years.

(3) The council shall administer an appeals process for district and postsecondary institution representatives to address issues outside the scope of the agreement, including the determination of alignment of course content to determine the appropriate credit ratio.

(4) The council shall issue recommendations to the department secretaries on issues not addressed in the agreement.

(5) Districts and postsecondary institutions shall be allowed to continue current practices regarding core courses offered for dual credit until the council issues its recommendations or no later than the beginning of the 2009-2010 school year, the time that dual credit courses become a high school graduation requirement.

(6) The higher education department and public education department secretaries shall act jointly upon dual credit council recommendations.

[6.30.7.11 NMAC - Rp, 6.30.7.11 NMAC, 06/30/08]

### 6.30.7.12 DATA COLLECTION AND REPORTING.

A. Data collection.

(1) Each semester, the form shall be used to document each student request for enrollment in dual credit courses and the review and approval process within the district and postsecondary institution. The postsecondary institution may require additional forms and information from the student.

(2) A completed form shall contain the high school student first name, middle initial, and last name, student identification number, student grade level, student

address (street address, city, state, and zip code), student telephone number, ACT high school code, secondary school name, postsecondary institution name, postsecondary institution course information (schedule number, course number, course section, course title, day, time, location, higher education credits, high school credits semester, year), a signed FERPA release form, required signatures, check boxes that indicate: whether form was completed and signed by all parties, whether student meets course prerequisites, and, if applicable, whether student high school record was received; applicable placement exam scores, high school grade point average, expected graduation date, and, if applicable, date of birth.

(3) In the event of scheduling changes, the postsecondary institution may change course information.

(4) Each district and postsecondary institution shall use the completed form to capture dual credit student data.

(5) Each district and postsecondary institution shall devise procedures for capturing dual credit data from the form.

(6) If applicable, each postsecondary institution shall bear responsibility for obtaining each dual credit student's social security number to meet data reporting requirements.

(7) Each postsecondary institution shall capture the public school student identification number retrieved from the completed form for each dual credit high school student.

(8) The public education department shall modify student transcripts to include the student identification number.

(9) The public education department shall capture the postsecondary institution course subject and number and course title from the appendix of each completed agreement.

**B. Data reporting.**

(1) For each completed form received, each district shall indicate which courses a dual credit student takes within the public education department data system.

(2) Each postsecondary institution shall report dual credit student data to the higher education department.

(3) Each district shall submit the dual credit report during the appropriate reporting period to the public education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(4) Each postsecondary institution shall submit the dual credit report during the appropriate reporting period to the higher education department that contains:

(a) the number of dual credit students enrolled in college courses; and

(b) the courses taken and grades earned of each dual credit student.

(5) The higher education department and the public education department shall verify and reconcile the respective dual credit reports at the end of each academic year.

(6) The public education department shall report to the legislature the high school graduation rates for participating districts for dual credit students once the students graduate from high school.

(7) The higher education department shall report to the legislature on the New Mexico postsecondary institutions dual credit students ultimately attend.

(8) The higher education department and the public education department shall annually report to the legislature the estimated cost of providing the statewide dual credit program, including tuition, fees, textbooks, and course supplies.

[6.30.7.12 NMAC - Rp, 6.30.7.12 NMAC, 6/30/08]

**6.30.7.13 NON PUBLIC SCHOOL STUDENTS.**

A. A home school, private school, or tribal school student who meets the eligibility criteria may receive both high school and college credit, provided that the student pays the full cost of the college courses.

B. Non public school students taking college courses for both high school and college credit shall be considered as being concurrently enrolled by the postsecondary institution for the purposes of data reporting.

[6.30.7.13 NMAC - Rp, 6.30.7.13 NMAC, 6/30/08]

**HISTORY OF 6.30.7 NMAC:**

6.30.7 NMAC, Dual Credit, filed 8/2/2005 - Repealed effective 01/01/2008.

6.30.7 NMAC, Dual Credit, filed 12/14/2007 - Repealed effective 06/30/2008

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 69 SCHOOL PERSONNEL - PERFORMANCE  
PART 3 PERFORMANCE EVALUATION REQUIREMENTS FOR ADMINISTRATORS**

**6.69.3.1 ISSUING AGENCY:** Public Education Department (PED)  
[6.69.3.1 NMAC - Rp, 6.69.3.1 NMAC, 07-01-08]

**6.69.3.2 SCOPE:** Chapter 69, Part 3, governs performance evaluation requirements for administrators other than principals or assistant principals in a public school district or charter school.

[6.69.3.2 NMAC - Rp, 6.69.3.2 NMAC, 07-01-08]

**6.69.3.3 STATUTORY AUTHORITY:** Sections 22-2-1, 22-2-2, and 22-10A-19, NMSA 1978.

[6.69.3.3 NMAC - Rp, 6.69.3.3 NMAC, 07-01-08]

**6.69.3.4 DURATION:** Permanent.

[6.69.3.4 NMAC - Rp, 6.69.3.4 NMAC, 07-01-08]

**6.69.3.5 EFFECTIVE DATE:** July 1, 2008, unless a later date is cited at the end of a section.

[6.69.3.5 NMAC - Rp, 6.69.3.5 NMAC, 07-01-08]

**6.69.3.6 OBJECTIVE:** This rule governs the requirements for the performance evaluation system for administrators other than principals, grades Pre K-12. This rule identifies the specific evaluation/supervision competencies and indicators for administrators other than principals.

[6.69.3.6 NMAC - Rp, 6.69.3.6 NMAC, 07-01-08]

**6.69.3.7 DEFINITIONS:** [Reserved]

**6.69.3.8 EVALUATIONS OF ADMINISTRATOR PERFORMANCE**

A. Beginning July 1, 2008 each school district shall implement a system of administrator performance evaluation which meets the requirements of this rule.

B. Prior to implementing the system of administrator performance evaluation, each school district shall involve all administrators in the development of evaluation criteria and data collection procedures.

C. Each school district shall include the following competencies and indicators as part of the evaluation criteria.

(1) The administrator demonstrates foresight, examines issues, and takes initiatives to improve the quality of education in the community:

(a) enables staff, students, parents, and community to build a common vision;

(b) articulates a vision and is able to make that vision concrete to others;

(c) provides a learning environment and climate where creativity, risk tak-

ing, and experimentation are shared by all stakeholders;

(d) understands, facilitates, and manages change in self, others, and the organization.

(2) The administrator embraces and encourages the acceptance of diversity:

(a) models respect, understanding, and appreciation for all people;

(b) addresses the special needs of groups and individuals;

(c) addresses the needs of multicultural, multilingual, multiracial, and economically diverse populations;

(d) promotes and supports recruitment and assignment of diverse staff;

(e) demonstrates sensitivity to alternative educational philosophies and methodologies.

(3) The administrator uses effective people skills to communicate:

(a) addresses the needs of staff, students, parents, and community;

(b) facilitates communication and the use of problem solving processes to promote teamwork, consensus, and inquiry;

(c) assists with the resolution of conflicts and stress;

(d) implements the staff evaluation process effectively;

(e) writes and speaks appropriately;

(f) keeps staff and community informed of pertinent information in a timely manner;

(g) utilizes appropriate listening skills.

(4) The administrator provides and maintains an environment where optimal student growth can take place:

(a) understands and supports the goals and purposes of the organization;

(b) promotes learning as the primary purpose of the organization;

(c) collaborates and networks with community service agencies, other educational organizations and businesses, as appropriate;

(d) provides and maintains a safe and healthy environment that promotes positive student behavior;

(e) understands and encourages the application of human growth and development principles;

(f) assesses and evaluates program and staff effectively.

(5) The administrator demonstrates instructional leadership:

(a) seeks out and provides staff with information on methodology, research, and current educational trends;

(b) identifies, accesses, and uses appropriate resources;

(c) makes reasonable decisions and accepts responsibility for those decisions;

(d) promotes collaboration and

mutual sharing among teachers and staff;

(e) encourages and allows other to lead as appropriate;

(f) comprehends effective learning and teaching processes.

(6) The administrator demonstrates an understanding of the dynamics of the educational organization:

(a) develops positive school/community relations;

(b) demonstrates an understanding of the politics of school governance and operations;

(c) informs staff, parents, and community of relevant facts to aid in reaching informed decisions;

(d) exhibits skills in comprehending, interpreting, and supporting positions of the organization;

(e) exhibits skills in lobbying, negotiating, collective bargaining, policy development, and policy maintenance;

(7) The administrator effectively manages the resources for which the position is responsible including personnel, finances, facilities, programs, and time:

(a) implements district policies, state standards, and federal regulations and laws;

(b) organizes, coordinates, and supervises staff assignments and needs;

(c) carries out appropriate fiscal procedures;

(d) utilizes and maintains facilities;

(e) demonstrates efficient time management by establishing schedules and reasonable timelines for completing tasks;

(f) utilizes available technology to meet administrative objectives;

(g) utilizes participatory management techniques.

(8) The administrator uses supervision, staff development, and performance evaluation to improve the educational program:

(a) implements a collaborative process in staff development;

(b) identifies and acknowledges effective performance in objective terms;

(c) assists individual professional development planning;

(d) develops, implements and evaluates the staff development program, collaboratively utilizing a variety of resources;

(e) follows procedures and participates in training consistent with the state and local teacher performance evaluation plan;

(f) provides regular feedback on performance.

(9) The administrator maintains a familiarity with current educational issues through a process of ongoing personal development:

(a) meets statutory requirements;

(b) participates in local, state and other training opportunities;

(c) reviews current professional literature;

(d) continues to expand knowledge and awareness of programs within the school district.

D. Each school district shall select or develop additional competencies and indicators determined appropriate by the school district to complete the total system of administrator evaluation.

E. Each school district shall provide training in conference skills and growth planning to all administrators and supervisors of administrators.

F. The administrator performance evaluation system shall include at least the following components:

(1) collect data on the administrator's performance to determine the presence and extent of competencies demonstrated;

(2) confer with the administrator prior to each observation and as soon as possible after each data collection instance to ensure the adequacy, accuracy, and completeness of the information obtained;

(3) identify strengths and areas of the administrator's performance where growth can occur;

(4) collaborate with the administrator on the development of a written plan for improvement or growth; the plan should include follow-up data collection and conferences with the administrator to determine progress toward completion of the plan;

(5) provide assistance to the administrator through individual guidance, workshops, classes, or other such means for completing the growth plan.

[6.69.3.8 NMAC - Rp, 6.69.3.8 NMAC, 07-01-08]

#### **HISTORY OF 6.69.3 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under:

SBE Regulation No. 89-6, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors, filed August 17, 1989.

SBE Regulation No. 93-21, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists, and Counselors, filed November 16, 1993.

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

6.69.3 NMAC, Performance Evaluation Requirements for Teachers, Administrators, Library Media Specialists and Counselors, filed 06-01-01- Repealed, 07-01-08.

**NEW MEXICO PUBLIC  
EDUCATION  
DEPARTMENT**

**TITLE 6 PRIMARY AND  
SECONDARY EDUCATION  
CHAPTER 69 SCHOOL PERSON-  
NEL - PERFORMANCE  
PART 6 PERFORMANCE  
EVALUATION REQUIREMENTS FOR  
SCHOOL COUNSELORS**

**6.69.6.1 ISSUING AGENCY:**  
Public Education Department (PED)  
[6.69.6.1 NMAC - N, 07-01-08]

**6.69.6.2 SCOPE:** Chapter 69,  
Part 3, governs performance evaluation  
requirements for school counselors.  
[6.69.6.2 NMAC - N, 07-01-08]

**6.69.6.3 STATUTORY  
AUTHORITY:** Sections 22-2-1, 22-2-2,  
and 22-10A-19, NMSA 1978.  
[6.69.6.3 NMAC - N, 07-01-08]

**6.69.6.4 DURATION:**  
Permanent.  
[6.69.6.4 NMAC - N, 07-01-08]

**6.69.6.5 EFFECTIVE DATE:**  
July 1, 2008, unless a later date is cited at  
the end of a section.  
[6.69.6.5 NMAC - N, 07-01-08]

**6.69.6.6 OBJECTIVE:** This  
rule governs the requirements for the per-  
formance evaluation system for school  
counselors, grades pre K-12. This rule  
identifies the specific evaluation/supervi-  
sion competencies and indicators for coun-  
selors.  
[6.69.6.6 NMAC - N, 07-01-08]

**6.69.6.7 DEFINITIONS:**  
[Reserved]

**6.69.6.8 EVALUATION OF  
SCHOOL COUNSELOR PERFOR-  
MANCE:**

A. Beginning July 1, 2008,  
each school district shall implement a sys-  
tem of counselor performance evaluation  
which meets the requirements of this rule.

B. Each evaluation/super-  
vision system shall include the following  
competencies as part of the evaluation crite-  
ria.

(1) The counselor will develop  
and implement a school level guidance pro-  
gram focused on the physical, social, intel-  
lectual, emotional, and vocational growth of  
each student by:

(a) determining guidance priori-  
ties based on local assessed needs;

(b) formulating measurable  
objectives from identified needs and priori-  
ties;

(c) formulating specific tasks  
relating to achieving the objectives;

(d) coordinating a continuing  
evaluation of the program;

(e) coordinating with the appro-  
priate administration to achieve subpara-  
graphs a-d of this paragraph.

(2) The counselor will coordinate  
activities in the guidance and counseling  
program by:

(a) working with other staff mem-  
bers to encourage the inclusion of a student-  
oriented philosophy in all school activities;

(b) helping to integrate the guid-  
ance and counseling program within the  
total school program;

(c) communicating with parents  
and community about services available  
within the guidance and counseling pro-  
gram;

(d) learning about available  
school and community resources;

(e) establishing and maintaining  
contact with school and community  
resources;

(f) working with the administra-  
tion to utilize community resources related  
to the guidance program.

(3) The counselor will provide  
information and facilitate guidance activi-  
ties for students, staff and parents by:

(a) assisting others in their under-  
standing of personal and social develop-  
ment;

(b) serving as a resource to facili-  
tate groups and presentations on pertinent  
issues;

(c) providing prevention strate-  
gies which address current issues such as  
chemical dependency, teenage pregnancy,  
suicide, dropping out, and various forms of  
abuse;

(d) conducting activities on edu-  
cational career themes;

(e) conducting orientation/train-  
ing programs for students, parents, and  
staff;

(f) interpreting test results to stu-  
dents, parents, and staff.

(4) The counselor will serve as a  
consultant to the school and community by:

(a) providing mediation for  
change in behavior and conflict resolution;

(b) serving as a liaison for issues  
pertinent to the learning environment of the  
school;

(c) supporting the staff with assis-  
tance in developing positive rapport with  
students to maximize learning potential;

(d) assisting teachers in identify-  
ing students who would benefit from coun-  
seling and providing feedback on referred  
students as appropriate;

(e) providing information to par-  
ents and students to aid in their understand-  
ing of educational goals;

(f) providing resource materials  
and expertise dealing with issues affecting  
students, staff, and family;

(g) providing information about  
appropriate community resources or organi-  
zations which provide services to students  
and their families.

(5) The counselor will provide  
individual and group counseling by:

(a) providing crisis intervention;

(b) using appropriate interven-  
tions in situations detrimental to the physi-  
cal, mental, educational, and emotional  
well-being of the individual;

(c) providing support to individu-  
als by addressing topics such as interper-  
sonal relations, communication, decision-  
making, problem solving skills, academic  
programs, and career and life planning;

(d) making referrals to school and  
community resources when necessary.

(6) The counselor will uphold the  
standards of the counseling profession by:

(a) meeting the state competency  
standard and the requirements for prepara-  
tion;

(b) participating in the develop-  
ment of policies concerning guidance and  
counseling;

(c) keeping informed about devel-  
opments and innovations within the profes-  
sion at the local, state, and national levels;

(d) following the legal and ethical  
standards of the counseling profession;

(e) realizing personal and profes-  
sional limitations.

C. The counselor perform-  
ance evaluation plan will include the five  
activities described in Subsection F of  
6.69.3.8 NMAC, with appropriate adjust-  
ments.

[6.69.6.8 NMAC -Rp. 6.69.3.11 NMAC,  
07-01-08]

**HISTORY OF 6.69.6 NMAC:**

**Pre-NMAC History:** The material in this  
part was derived from that previously filed  
with the State Records Center and Archives  
under:

SBE Regulation No. 89-6, Performance  
Evaluation Requirements for Teachers,  
Administrators, Library Media Specialists,  
and Counselors, filed August 17, 1989.

SBE Regulation No. 93-21, Performance  
Evaluation Requirements for Teachers,  
Administrators, Library Media Specialists,  
and Counselors, filed November 16, 1993.

**History of Repealed Material:**

6.69.3 NMAC, Performance Evaluation  
Requirements for Teachers, Administrators,  
Library Media Specialists and Counselors,  
filed 06-01-01- Repealed, 07-01-08.

**NEW MEXICO PUBLIC  
EDUCATION  
DEPARTMENT**

**TITLE 6 PRIMARY AND  
SECONDARY EDUCATION  
CHAPTER 69 SCHOOL PERSON-  
NEL - PERFORMANCE  
PART 7 PERFORMANCE  
EVALUATION REQUIREMENTS FOR  
PRINCIPALS AND ASSISTANT PRIN-  
CIPALS**

**6.69.7.1 ISSUING AGENCY:**  
Public Education Department (PED).  
[6.69.7.1 NMAC - N, 07-01-08]

**6.69.7.2 SCOPE:** Chapter 69,  
Part 7 governs performance evaluation sys-  
tem requirements for principals and assis-  
tant principals.  
[6.69.7.2 NMAC - N, 07-01-08]

**6.69.7.3 STATUTORY  
AUTHORITY:** Sections 22-2-1, 22-2-2,  
22-10A-1-11(E) and 22-10A-19(A), et seq.,  
NMSA 1978.  
[6.69.7.3 NMAC - N, 07-01-08]

**6.69.7.4 DURATION:**  
Permanent.  
[6.69.7.4 NMAC - N, 07-01-08]

**6.69.7.5 EFFECTIVE DATE:**  
July 1, 2008, unless a later date is cited at  
the end of a section.  
[6.69.7.5 NMAC - N, 07-01-08]

**6.69.7.6 OBJECTIVE:** This  
rule governs the requirements for a high  
objective statewide standard of evaluation  
for principals and assistant principals in five  
leadership domains: instructional leader-  
ship, communication, professional develop-  
ment, operations management, and scope of  
responsibility in secondary schools. This  
rule identifies the specific evaluation com-  
petencies standards with indicators and pro-  
cedural requirements for a competency-  
based evaluation system for principals and  
assistant principals.  
[6.69.7.6 NMAC - N, 07-01-08]

**6.69.7.7 DEFINITIONS:**

A. "Accountability litera-  
cy" means the ability to interpret and use  
data and to negotiate support for education  
in political, professional, and community  
settings.

B. "Assistant principal"  
means an associate to the chief instruction-  
al leader and administrative head of a pub-  
lic or charter school.

C. "Competency" means  
the job-related performance expectations of  
a principal or assistant principal.

D. "Indicator" means a  
specific behavior associated with a compe-  
tency that exemplifies an acceptable stan-  
dard of performance.

E. "Leadership domain"  
means a major area of responsibility of a  
principal or assistant principal.

F. "Principal" means the  
chief instructional leader and administrative  
head of a public or charter school.

G. "Professional develop-  
ment plan" means a collaborative enterprise  
involving the principal and supervisor in  
establishing a yearly plan for professional  
learning goals, activities, and measurable  
objectives based on the principal competen-  
cies and the goals of the district and school  
educational plan for student success.  
[6.69.7.7 NMAC - N, 07-01-08]

**6.69.7.8 REQUIREMENTS:**

A. Every public and char-  
ter school principal and assistant principal  
must have an annual performance evalua-  
tion based on an annual professional devel-  
opment plan that meets the requirements of  
the state's high objective uniform statewide  
standard of evaluation. The format for this  
evaluation shall be established by the PED  
and shall be uniform throughout the state in  
all public school districts and charter  
schools.

B. No later than October  
15, 2008, each public school district and  
charter school shall adopt policies, guide-  
lines, and procedures for annual principal  
and assistant principal performance evalua-  
tion that meets the requirements of this rule.

C. No later than forty  
school days after the principal or assistant  
principal commences his or her duties each  
school year, each principal and assistant  
principal and his or her supervisor shall  
establish a professional development plan  
for the principal or assistant principal, with  
measurable objectives, for the coming year  
based on, among other things:

(1) the PED's principal compe-  
tencies and indicators in 6.69.7.9 NMAC,  
which pertain to the duties of the principal  
or assistant principal;

(2) the goals of the district/school  
educational plan for student success;

(3) the previous year's annual  
evaluation, if applicable; and

(4) assurance that the principal or  
assistant principal is appropriately licensed  
by the PED for his or her assignment.

D. The supervisor shall  
formally observe each principal or assistant  
principal's professional practice at least  
twice annually to determine the principal or  
assistant principal's ability to demonstrate  
state adopted competencies and indicators.

E. The supervisor and the  
principal or assistant principal shall hold a  
mid-year conference annually to assess

progress toward meeting the objectives of  
the professional development plan.

F. Principals and assistant  
principals shall reflect on their professional  
practice and ability to demonstrate the prin-  
cipal and assistant principal competencies  
by providing their supervisor with a written  
reflection document at least once annually.

G. Annual performance  
evaluations shall be based on, among other  
things, how well the professional develop-  
ment plan was carried out and the extent to  
which progress was made toward achieving  
the measurable objectives.

[6.69.7.8 NMAC - N, 07-01-08]

**6.69.7.9 COMPETENCIES  
AND INDICATORS:**

A. The principal/assistant  
principal promotes the success of all stu-  
dents by maintaining a culture that supports  
student achievement, high quality instruc-  
tion, and professional development to meet  
the diverse learning needs of the school  
community:

(1) works with all members of the  
school community to make quality instruc-  
tion a prime focus;

(2) uses accountability literacy in  
making decisions about student success and  
achievement;

(3) evaluates teachers using the  
three-tiered licensure performance evalua-  
tion system to promote high quality teach-  
ing and professional learning; and

(4) incorporates the diversity of  
the student population and history of the  
school community in making curricular and  
school policy decisions.

B. The principal/assistant  
principal uses communication and relation-  
ship-building skills to engage the larger  
community in the knowledge of, and advoca-  
cy for, equity in meeting the diverse  
needs of the school community:

(1) engages in honest and respect-  
ful interactions with all stake holders to  
make thoughtful and objective decisions  
that demonstrate sensitivity and integrity;

(2) builds and sustains relation-  
ships through team development and medi-  
ation skills to promote a climate of cooper-  
ation and student success;

(3) supports an environment of  
inclusion and respect;

(4) communicates with others  
objectively, sensitively, fairly and ethically;

(5) supports relationships that  
promote teaching and learning in the school  
community through communication skills  
such as speaking, writing, and active listen-  
ing;

(6) communicates with all school  
and community stakeholders concerning  
current school issues and student achieve-  
ment; and

(7) maintains a continuous dia-

logue with decision makers who affect the school community.

C. The principal/assistant principal organizes and coordinates ongoing professional learning opportunities that are aligned with the New Mexico professional development framework in 6.65.2 NMAC, and supports the diverse learning needs of the school community:

(1) identifies and assesses student and staff performance to inform professional development needs;

(2) uses relevant professional literature and knowledge, collaborates with key partners, and uses technology to create professional development programs;

(3) implements comprehensive, integrated and systematic ongoing professional development opportunities for faculty and community; and

(4) supports reflection, sustained mentoring, and coaching as critical processes for professional growth.

D. The principal/assistant principal manages the school campus, budget, and daily operations to equitably meet the diverse learning needs of the school community:

(1) manages the school campus to ensure that the environment is safe and clean for students and staff;

(2) manages the school budget to ensure that resources are maximized for student success;

(3) manages the day to day operations to maximize the efficiency of the school; and

(4) complies with federal and state initiatives to maximize use of services and programs for which students are eligible.

E. The middle school and high school principal/assistant principal develops, supports, encourages, and supervises programs that lead to increased student retention and achievement resulting in college readiness and work skills:

(1) supervises co-curricular and extracurricular activities to engage all students;

(2) develops 21st century skills throughout the curriculum; and

(3) creates a student centered school environment and strengthens relationships among all stakeholders to improve student performance.

[6.69.7.9 NMAC - N, 07-01-08]

**HISTORY OF 6.69.7 NMAC:  
[RESERVED]**

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.2 NMAC, Sections 1 and 8, effective 07-01-08.

**6.63.2.1 ISSUING AGENCY:**  
Public Education Department (PED).

[07-31-97; 07-30-99; 6.63.2.1 NMAC - Rn, 6 NMAC 4.2.3.1.1, 10-31-01; A, 06-15-06; A, 07-01-08]

**6.63.2.8 REQUIREMENTS:**

A. Persons seeking an associate school nurse license pursuant to the provisions of this rule shall meet the following requirements:

(1) associate's degree in nursing from a regionally accredited college or university or from an institution accredited by the national league of nursing or a diploma program in nursing accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses or license from another state based on current compact state license according to New Mexico nursing board rule, 16.12.2 NMAC.

B. Persons seeking a professional school nurse license pursuant to the provisions of this rule shall meet the following requirements:

(1) bachelor's degree in nursing or in a health related field from a regionally accredited college or university or from an institution accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses or license from another state based on current compact state license according to New Mexico nursing board rule, 16.12.2 NMAC.

C. Persons seeking a supervisory school nurse license pursuant to the provisions of this rule shall meet the following requirements:

(1) master's degree in nursing or in a health related field from a regionally accredited college or university or from an institution accredited by the national league of nursing; and

(2) a valid New Mexico registered nurse license issued by the New Mexico board of nursing or any successor licensing board for nurses or license from another state based on current compact state license according to New Mexico nursing board rule, 16.12.2 NMAC.

[07-31-97; 6.63.2.8 NMAC - Rn, 6 NMAC 4.2.3.1.8, 10-31-01; A, 09-30-03; A, 06-15-06; A, 07-01-08]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.16 NMAC, Sections 1, 2 and 6 through 11, effective 07-01-08. The Part name was also amended.

**PART 16 LICENSURE FOR  
SCHOOL LICENSED PRACTICAL  
NURSES, GRADES PRE K-12**

**6.63.16.1 ISSUING AGENCY:**  
Public Education Department (PED)

[6.63.16.1 NMAC - N, 05-28-04; A, 07-01-08]

**6.63.16.2 SCOPE:** This rule governs licensure for school licensed practical nurses, grades Pre K-12.

[6.63.16.2 NMAC - N, 05-28-04; A, 07-01-08]

**6.63.16.6 OBJECTIVE:** This ~~regulation~~ rule establishes the requirements for school licensed practical nurses, grades Pre K-12, for persons seeking such licensure.

[6.63.16.6 NMAC - N, 05-28-04; A, 07-01-08]

**6.63.16.7 DEFINITIONS:**

A. "Administration of medications" is a process as defined in Paragraph (2) of Subsection A of 16.12.2.7 NMAC whereby a prescribed drug or biological agent is given to a patient/client by a person licensed to administer medications. The administration of medications is a procedure which requires a knowledge of anatomy, physiology, pathophysiology, and pharmacology. When administering a medication, the licensed person is required to assess the patient/client's health status and disease process before and after the administration of the medication and to evaluate the patient/client's response to the drug or biologic agent.

B. "Assessment" as defined in Paragraph ~~(7)~~ (8) of Subsection A of 16.12.2.7 NMAC means the review and interpretation by a licensed individual of specific data necessary to determine the patient/client's care and treatment needs.

C. "Assisting an individual to take a medication" ~~[as defined by Paragraph (9) of Subsection A of 6.12.2.7 NMAC]~~ implies that the individual is responsible for his own care or parent/legal guardian/surrogate can determine if the individual is receiving the expected response from the medication. The definition of administration of medications by licensed persons as defined above should not be confused with assisting an individual

to take a medication.

D. "Competency in nursing" as defined by Paragraph (3) of Subsection C of 16.12.2.7 NMAC, is the ability to perform skillfully and proficiently the role of the licensee. The role encompasses essential knowledge, judgment, attitudes, values, skills and abilities, which are varied in range and complexity. Competency is a dynamic concept and is based on educational training, preparation, and expertise.

E. "Delegation" means that the nurse shall assign/delegate to licensed and unlicensed persons only those nursing functions which that person is prepared, qualified, or licensed to perform.

(1) The nurse is accountable for assessing the situation and is responsible for the decision to delegate or make the assignment.

(2) The delegating nurse is accountable for each activity delegated, for supervising the delegated function [~~and/or~~] or activity, and for assessing the outcome of the delegated function [~~and/or~~] or activity.

(3) The nurse may delegate nursing activities other than the specific functions of medication administration, assessment, evaluation and nursing judgment to non-licensed persons, except for the administration of medications as provided for in Paragraph (3) of Subsection B of 16.12.2.12 NMAC.

F. "Licensed practical nursing" as defined in Subsection I of Section 61-3-3, NMSA 1978, means the practice of a directed scope of nursing requiring basic knowledge of the biological, physical, social and behavioral sciences and nursing procedures, which practice is at the direction of a registered nurse, physician, or dentist licensed to practice in this state. This practice includes but is not limited to:

(1) contributing to the assessment of the health status of individuals, families and communities;

(2) participating in the development and modification of the plan of care;

(3) implementing appropriate aspects of the plan of care commensurate with education and verified competence;

(4) collaborating with other health care professionals in the management of health care; and

(5) participating in the evaluation of responses to interventions.

G. "Nursing Practice Act" means Chapter 61, Article 3 NMSA 1978 regulating the practice of nursing, schools of nursing, hemodialysis technicians and medication aides in the state.

H. "Professional registered nursing" as defined in Subsection M of Section 61-3-3, NMSA 1978, means the practice of the full scope of nursing requiring substantial knowledge of the biological,

physical, social and behavioral sciences and of nursing theory and may include advanced practice pursuant to the Nursing Practice Act. This practice includes but is not limited to:

(1) assessing the health status of individuals, families, and communities;

(2) establishing a nursing diagnosis;

(3) establishing goals to meet identified health care needs;

(4) developing a plan of care;

(5) determining nursing interventions to implement the plan of care;

(6) implementing the plan of care commensurate with education and verified competence;

(7) evaluating responses to interventions;

(8) teaching based on the theory and practice of nursing;

(9) managing and supervising the practice of nursing;

(10) collaborating with other health care professionals in the management of health care; and

(11) conducting nursing research.

I. "Scope of practice" as defined in Subsection O of Section 61-3-3, NMSA 1978, means the parameters within which nurses practice based upon education, experience, licensure, certification and expertise.

J. "Supervision/direction" as defined in Paragraph (5) of Subsection S of 16.12.2.7 NMAC, means initial verification of a person's knowledge and skills in the performance of a specific function [~~and/or~~] or activity followed by periodic observation, direction and evaluation of that person's knowledge and skills as related to the specific functions [~~and/or~~] or activity.

[6.63.16.7 NMAC - N, 05-28-04; A, 07-01-08]

#### **6.63.16.8 REQUIREMENTS:**

Persons seeking licensure as a school licensed practical nurse (LPN) pursuant to the provisions of this rule shall meet the following requirements:

A. high school diploma or equivalency; and

B. minimum 18 years of age; and

C. current valid American red cross, American heart association or national safety council certification in cardiopulmonary resuscitation (CPR); and

D. completion of a state approved [~~and/or~~] or nationally accredited program of study for practical nursing; and

E. current valid practical nursing license issued by the New Mexico board of nursing or any successor licensing board for nurses; or license from another state based on current compact state license according to New Mexico nursing board

rule 16.12.2 NMAC, and

F. minimum of one year of supervised clinical nursing experience, outside of a school setting; and

G. verification by the public school superintendent or private school official that a local orientation related to assigned duties, and facilitated by the [~~public education department~~] PED licensed registered nurse, was satisfactorily completed.

[6.63.16.8 NMAC - N, 05-28-04; A, 07-01-08]

#### **6.63.16.9 CONTINUING LICENSURE FOR SCHOOL LICENSED PRACTICAL NURSES:**

Persons holding a valid level 1 school licensed practical nurse and seeking a level 2 license shall meet the following requirements:

A. A completed application for continuing New Mexico licensure shall be submitted to the [~~public education department~~] PED.

B. The superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of application for continuing licensure must submit verification that the applicant satisfactorily demonstrates the competencies for school licensed practical nurse.

C. A copy of a valid practical nursing license shall be submitted with the application for continuing New Mexico licensure.

[6.63.16.9 NMAC - N, 05-28-04; A, 07-01-08]

#### **6.63.16.10 COMPETENCIES FOR ENTRY LEVEL SCHOOL LICENSED PRACTICAL NURSES:**

The principle role of the school licensed practical nurse is to assist the [~~public education department~~] PED licensed registered nurse with the implementation of the school health program, by providing practical nursing care for students in the health room, and by meeting the complex needs of medically fragile/severely disabled students. This includes, but is not limited to, nursing procedures, medication administration, assisting in the assessment and monitoring of the health and immunization status of students, and communicating effectively with parents, students, medical providers and school staff. These functions may be carried out in the health room or classroom, traveling to and from school, and on field trips for community based instruction.

A. Contributes to the assessment of the health status of individual students and schools.

(1) uses basic nursing knowledge to assess and monitor the status of individ-

ual students;

(2) participates in the routine health screening, and assists in the assessment of screening results;

(3) assists in the assessment of the immunization status of the student population.

B. Participates in the development of the nursing plan for care for individual students and the school population.

(1) assists with the development of individualized health/emergency care plans;

(2) assists with school planning related to health and safety.

C. Implements aspects of the nursing plan of care, commensurate with education and verified competency, under the direction and supervision of the ~~[public education department]~~ PED licensed registered nurse.

(1) provides nursing/medically prescribed interventions including, but not limited to: tube feeding, urinary catheterization, glucose monitoring, tracheal suctioning, nebulizer treatment, peak flow measurement and ventilator care;

(2) administers medications to students who are unable to self administer their medications in compliance with the Nursing Practice Act;

(3) assists in the implementation of policies and procedures regarding the control of communicable diseases in schools;

(4) prepares and maintains accurate and complete records and reports as required by law, state directives, district policy and administrative regulations.

D. Collaborates with ~~[public education department]~~ PED licensed registered nurses, health assistants, site administrators, school staff, parents and students regarding the provision of health care for individual students and the school population as a whole.

E. Participates in the evaluation of responses to nursing interventions.

F. Maintains professional competence through individual and staff training, in-service educational activities and self-selected professional growth activities.

G. Shares the responsibility for the care of district inventory, as well as the proper and safe use of facilities, equipment and supplies, reporting safety hazards promptly.

H. Maintains confidentiality in accordance with state and federal laws and district policy.

I. Demonstrates effective interpersonal and communication skills (written and oral) with diverse populations. [6.63.16.10 NMAC - N, 05-28-04; A, 07-

01-08]

**6.63.16.11 NOTIFICATION REQUIREMENT:** All persons issued a license as school licensed practical nurses, grades Pre K-12, by the ~~[public education department]~~ PED shall continuously hold a license issued by the board of nursing for so long as they hold licensure issued by the ~~[public education department]~~ PED.

A. Should this underlying license expire, be suspended or revoked, or its renewed or initial issuance denied, a person seeking or holding a license as a school licensed practical nurse, grades Pre K-12 from the ~~[public education department]~~ PED shall notify the local school superintendent and ~~[professional licensure]~~ the professional licensure bureau (PLB) in writing within fourteen (14) calendar days of such suspension, revocation, denial or expiration.

B. Suspension, revocation, denial or expiration of the license issued by the board of nursing shall constitute just cause for discharge or termination from employment, and for suspension, revocation or denial of renewed or initial issuance of an instructional support provider license. [6.63.16.11 NMAC - N, 05-28-04; A, 07-01-08]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.80.4 NMAC, Sections 7, 8, 9, and 11 through 19, effective June 30, 2008.

### 6.80.4.7 DEFINITIONS:

A. "Applicant" means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits an initial or renewal application to a chartering authority.

B. "Authorizer" means either a local school board or the commission that permits the operation of a charter school.

C. "Charter school" means a conversion school or start-up school authorized by a chartering authority to operate as a public school.

D. "Chartering authority" means either a local school board or the commission that permits the operation of a charter school.

E. "Chief executive officer" means the person with duties similar to that of a superintendent as set forth in 22-5-14 NMSA 1978.

~~[E-]~~ F. "Commission" means the public education commission.

~~[F-]~~ G. "Conversion school"

means an existing public school within a school district that was authorized by a local school board or the commission to become a charter school ~~[prior to July 1, 2007]~~.

~~[G-]~~ H. "Department" means the public education department.

~~[H-]~~ I. "Division" means the charter schools division of the department which maintains offices in both Santa Fe and Albuquerque.

~~[I-]~~ J. "Governing body" means the governing body of a charter school as set forth in the school's charter.

~~[J-]~~ K. "Head administrator" means the duly licensed school administrator who is the chief executive officer of the charter school.

~~[K-]~~ L. "Locally chartered charter school" means a charter school authorized by a local school board.

~~[L-]~~ M. "MEM" means membership, which is the total enrollment of qualified students on the current roll of a class or school on a specified day.

~~[M-]~~ N. "Organizer" means one or more persons or entities who seek to arrange, form or otherwise put together a charter school.

O. "Prospective applicant" means one or more teachers, parents or community members or a public post-secondary educational institution or nonprofit organization who submits a notice of intent to a chartering authority.

~~[N-]~~ P. "Secretary" means the New Mexico secretary of public education.

~~[O-]~~ Q. "Start-up charter school" means a public school developed by one or more parents, teachers or community members who applied to and were authorized by a chartering authority to become a charter school.

R. "Application for start-up charter school" means an application requesting the establishment of either a locally-chartered or state-chartered school.

~~[P-]~~ S. "Special education plan" means a comprehensive written design, scheme or method that includes specific details on how the charter school shall:

(1) utilize state and federal funds to provide children with disabilities a free and appropriate public education, in accordance with applicable law;

(2) provide educational services, related services and supplementary aids and services to children with disabilities in accordance with each child's individualized education program; and

(3) address a continuum of alternative educational placements to meet the needs of ~~[the]~~ students with disabilities, in accordance with applicable law.

~~[Q-]~~ T. "State-chartered charter school" means a charter school authorized by the commission.



[6.80.4.7 NMAC - Rp, 6.80.4.7 NMAC, 6/29/07; A, 6/30/08]

**6.80.4.8 NOTICE OF INTENT TO ESTABLISH A CHARTER SCHOOL:**

A. At least one hundred eighty (180) calendar days prior to initial application, the organizers of a proposed charter school shall provide a signed written notification to the commission and the school district in which the charter school is to be located of the organizers' intent to establish a charter school. The date for submitting a notice shall be no later than January 1 of the year in which the ~~[charter]~~ prospective applicant plans to submit an application.

B. Written notification to the commission shall be made to the division at its Albuquerque office; written notification to a local school board shall be made to the superintendent of that district who shall provide copies of the notification to the local school board during a duly noticed board meeting.

C. If the one hundred eightieth day falls on a Saturday, Sunday, or legal holiday, the notification shall be timely if faxed, hand delivered or otherwise received on the first day following the Saturday, Sunday or legal holiday that the division or office of the pertinent superintendent is open for business. Notice will also be considered timely if it is postmarked four (4) calendar days prior to January 1, regardless of the date on which it is received. Failure to provide timely notification shall result in an application being rejected unless the organizers can demonstrate good cause why timely notification was not given.

[6.80.4.8 NMAC - N, 6/29/07; A, 6/30/08]

**6.80.4.9 CONTENTS OF APPLICATION FOR START-UP CHARTER SCHOOL:**

A charter school application shall be a proposed agreement between the chartering authority and the charter school and shall include the following assurances, descriptions, outlines and plans.

A. The mission statement of the charter school. The mission statement must answer the following questions: "Who do you serve?", "What do you seek to accomplish?", "What methods will you use?", and "How will we know if you are achieving your mission?"

B. The goals, objectives and student performance standards to be achieved by the charter school which address how the charter school will comply with the department's required content standards, benchmarks, and performance standards, state accreditation, standardized testing and school report card in accordance

with Sections 22-2C-1 et seq. NMSA, 1978. The goals and objectives must be measurable and student-centered.

C. A description of the charter school's educational program and curriculum that meets or exceeds the department's educational standards and must be designed to enable each student to achieve those standards and addresses the following:

(1) documentation, research or rationale that supports a particular curricular approach;

(2) a description of the curriculum including scope and sequence and student performance standards;

(3) a timeline for alignment of the curriculum with the department's content standards, benchmarks and performance standards, if alignment has not been completed at the time the application is submitted;

(4) strategies and methods to be used in delivering the curriculum and how the curriculum will address students' needs and assist each student in reaching those standards;

(5) length of school day and school year;

(6) total number of grades the charter school proposes to provide, either immediately or ~~[phased]~~ in phases, class size and total projected student enrollment and, if the charter school will be located in a school district that has a total enrollment of not more than one thousand three hundred (1,300) students, a statement that the proposed charter school's proposed enrollment for all grades, in combination with any other charter school's enrollment for all grades, will neither equal nor exceed ten (10) percent of the total MEM of that school district;

(7) proposed requirements for graduation, if applicable.

D. A description of the way a charter school's educational program will meet the individual needs of students, including those students determined to be at risk, and which will address the following:

(1) suggested modifications to the proposed educational program to meet individual student needs, such as bilingual, limited English proficient, and special education;

(2) an outline of a special education plan, the final plan of which must be completed and submitted to the charter authorizer by the end of the planning year;

(3) how the charter school will provide access to other services including but not limited to counseling and health.

E. A description or outline of a plan the charter school considers adopting for evaluating student performance, the types of assessments that will be used to measure student progress toward achieve-

ment of the state's standards and the school's student performance standards, the timeline for achievement of the standards, and the procedures for taking corrective action in the event that student performance falls below the standards, and which description or outline addresses the following:

(1) remediation for students not achieving standards, including a timeline for implementation of the remediation plan;

(2) assessments that might be considered in addition to the statewide mandated testing;

(3) documentation and reporting of student data.

F. Assurances that the charter school will be economically sound, including the submission of a proposed budget for the term of the charter and a description of the manner in which the annual audit of the financial and administrative operations of the charter school is to be conducted, and addresses the following:

(1) a proposed budget for year one and the following four (4) years based on the current unit value;

(2) a description of the administrative operations of the charter school.

G. An assurance that the fiscal management of the charter school will comply with all applicable federal and state laws, regulations and rules relative to fiscal procedures. In addition to this basic assurance, the applicant shall clearly state in its assurance that the following information will be provided to the chartering authority by the ~~sooner of the end or~~ end of the planning year or within ten (10) days of receipt of any federal or state stimulus funds:

(1) a detailed plan indicating how the charter school will manage its fiscal responsibilities;

(2) a description of its internal control procedures that the charter school will utilize to safeguard assets, segregate its payroll and other check disbursement duties, provide reliable financial information, promote operational efficiency, and ensure compliance with all applicable federal statutes and regulations and state statutes and rules relative to fiscal procedures.

H. ~~[A description]~~ The names of the members of the governing body and a description of the operation of the charter school, including:

(1) the method of selecting the governing body;

(2) the qualifications and terms of members, the filling of vacancies, and the procedures for changing governing body membership;

(3) an assurance that the governing body will meet and conduct its meetings in accordance with the Open Meetings Act, Sections 10-15-1 et seq., NMSA 1978;

(4) the nature and extent of parental, professional educator and community involvement [~~and how they will be notified;~~] in the governance and the operation of the school;

(5) an assurance that the charter school will adopt policies and procedures of the governing body, that address governance, relationship to staff, professional development, the role of the governing body in policy-making, personnel decisions, budgeting, and operation of the charter school, including how decisions will be made;

(6) for locally chartered charter schools, an assurance that it will amend its charter within one (1) year of approval to include procedures agreed upon with its chartering authority for the resolution of disputes between them;

(7) a description [~~on~~] of how the charter school proposes to account to the chartering authority with respect to the charter [~~schools'~~] school's compliance with applicable [~~statutes~~] statutes, regulations, rules and charter provisions;

(8) an assurance by each governing body member that they have read the application and agree to its submission to the chartering authority.

I. An explanation of the relationship that will exist between the proposed charter school and its employees, including evidence that the terms and conditions of employment will be addressed with affected employees and their recognized representatives, if any, and which address the following:

(1) personnel policies and procedures that comply with all applicable federal statutes and regulations, the School Personnel Act, Sections 22-10-1 et seq., NMSA 1978, and the Charter Schools Act, Sections 22-8B-1 et seq. NMSA 1978 or, if personnel policies and procedures have not been developed at the time of the application, a statement that the policies and procedures developed will comply with applicable federal and state labor laws, regulations and rules implementing them [~~and will be submitted to the chartering authority for comment prior to the hiring of any employees;~~];

(2) a description of the evaluation process for staff which shall include evaluation of teachers by a licensed school administrator;

(3) the discipline process for staff, that provides for due process and demonstrates [~~and~~] an understanding of applicable state and federal laws, regulations and rules;

(4) an assurance that the governing body or head administrator will recognize and work with employee labor representatives, if any;

(5) a proposed salary schedule;

(6) proposed job descriptions of staff;

(7) a proposed pupil-teacher ratio [~~and~~]

~~[(8) a statement declaring whether the governing body or the head administrator will be making the employment decisions for the proposed charter school].~~

J. The student discipline policy of the proposed charter school that complies with the department's rule on students' rights and responsibilities.

K. For [~~locally chartered~~] charter schools, a proposed agreement between the charter school and the [~~local school board~~] authorizer regarding their respective legal liability and applicable insurance coverage. [~~For all applicants, they shall submit a statement that the charter school will participate in or seek a waiver from coverage by the public school insurance authority and comply with all applicable rules of that authority. Any applicant seeking to obtain a waiver of coverage from the public school insurance authority shall:~~

~~(1) comply with all requirements of Section 22-29-9, NMSA 1978 and 6.50.7 NMAC, as well as any other applicable rules promulgated by the public school insurance authority;~~

~~(2) obtain a temporary, comprehensive policy of liability coverage that insures the charter school in an amount of at least five million dollars (\$5,000,000) per occurrence and is risk related coverage as that term is used in Section 6.50.7.10 NMAC, while the charter school is engaged in the waiver request process; and~~

~~(3) within fourteen (14) days of receipt of any stimulus, flow through or funding formula funds, provide an insurance binder or certificate to its chartering authority that demonstrates it holds the required level of temporary coverage.]~~

L. A description of how the charter school plans to meet the transportation and food service needs of its students. The description shall address whether the applicant intends to contract with a school district or other party for the provision of transportation and food services; the identity of the school district or that other party, if known, with whom the applicant proposes to contract; a description of the proposed terms of any contract; and for these services a description of the status of any preliminary negotiations with any school districts or other parties regarding the provision of transportation or food service.

M. A description of the waivers that the charter school is requesting from either the local school board or the department or both and the charter school's plan for addressing these waiver requests

that:

(1) lists the specific [~~waivers~~] policy by number and title [~~that~~] for which waivers are requested from local school board policy;

~~[(2) describes the process the charter school will use to request waivers from local school board policy;~~

~~[(3) (2) lists the specific waivers that are requested from the department's requirements, rules, and provisions of the Public School Code, Sections 22-1-1 et seq., NMSA 1978, pertaining to individual class load, teaching load, length of the school day, staffing patterns, subject areas, purchase of instructional material, evaluation standards for school personnel, school principal duties, driver education and graduation requirements [~~and~~]~~

~~[(4) describes how the charter school will address the requested waivers from the department].~~

N. A description of the facilities the charter school plans to use, taking phase-in and availability into account. The charter school shall provide a detailed description of its proposed capital outlay needs, including projected requests for capital outlay assistance for the charter school. Additionally, the charter school shall provide an assurance that:

(1) the facility it seeks to use is safe and suitable for use as a school;

(2) it will develop and maintain a plan for addressing code, accessibility requirements and any other health and safety requirements, if necessary;

(3) it will develop and maintain a plan for operation, maintenance and repair of a facility;

(4) it will produce a certificate of occupancy for use of the facility; and

(5) prior to opening that the facility to be used meets all applicable federal and state health, safety and code requirements.

O. A description of the enrollment procedures to be used by the charter school that complies with Section 22-8B-4.1, NMSA, 1978 and Subsection D of 6.80.4.12 NMAC.

P. An explanation of how approval of the charter school would be in the best interest of students, school district and community where it intends to locate, and serves a purpose in that community. [6.80.4.9 NMAC - Rp, 6.80.4.8 NMAC, 6/29/07; A, 6/30/08]

#### **6.80.4.11 REQUIREMENTS DURING THE PLANNING YEAR:**

A. For charter schools approved prior to July 1, 2010, prior to the end of its planning year, a newly authorized charter school shall demonstrate to the authorizer that its facilities meet the educa-

tional occupancy standards required by applicable New Mexico construction codes. For charters approved on or after July 1, 2010, prior to the end of its planning year, the charter school shall demonstrate to its authorizer that its facilities meet the relevant requirements for schools as set forth in Section 22-8B-4.2C, NMSA 1978.

B. A charter school shall simultaneously notify the public school capital outlay council and its authorizer in writing of its readiness to demonstrate that its facilities meet the referenced educational occupancy standards.

C. The public school capital outlay council shall determine whether a charter school's facilities meet established educational occupancy standards, and if not, whether specific requirements are inappropriate or unreasonable for a charter school. If the public school capital outlay council determines that specific requirements of the referenced educational occupancy standards are ~~neither~~ inappropriate ~~[nor]~~ or unreasonable for a charter school, it may grant a variance. The public school capital outlay council shall provide written notification of its decision and the reasons thereto simultaneously to the charter school and its authorizer.

D. Prior to the end of its planning year, a state chartered charter school shall demonstrate that it has qualified as a board of finance and that it has satisfied any conditions imposed by the commission before commencing full operation for the remainder of its charter term.

E. Prior to the end of its planning year, the state-chartered charter schools shall apply to the commission for authorization to commence full operations. If the commission refuses to issue the authorization to commence full operation, it shall provide its reasons in writing, which shall be limited to the reasons set forth in Subsection D of 6.80.4.11 NMAC. [6.80.4.11 NMAC - N, 6/29/07; A, 6/30/08]

#### **6.80.4.12 INITIAL REQUIREMENTS AND REVIEW PROCESS FOR START-UP SCHOOLS:**

A. ~~[A chartering authority shall have the authority to approve the establishment of a charter school within the geographic boundaries of a local school district in which it is to be located.]~~ Local school boards may approve the establishment of charter schools to be located in their respective districts. The commission may approve the establishment of a charter school to be located anywhere in the state.

B. An applicant shall apply to only one chartering authority at a time. An applicant whose application has been denied by a chartering authority or approved with amendments unacceptable to the applicant may file the same application

the following fiscal year with a different chartering authority.

C. Applications for start-up schools shall be submitted by July 1 to be eligible for consideration for the following fiscal year. The July 1 submission deadline may be waived upon agreement of the applicant and the chartering authority. If July 1 falls on a Saturday or a Sunday, the deadline for filing applications shall be extended to the close of business of the very next Monday, even in the case of a school district closed for summer break. Failure to submit a timely application shall result in an application being rejected by the authorizer, unless the parties agree to waive the filing deadline in accordance with Section 22-8B-6 NMSA 1978. Any such waiver shall be in writing and signed by a person authorized to take such action.

D. Enrollment in a start-up charter school shall be guided by the following.

(1) A charter applicant must ~~[determine whether it will]~~ enroll students on a first-come, ~~[first-serve]~~ first-served basis or through a lottery selection process if the total number of applicants exceeds the number of spaces available.

~~[(2) If, in the event the total number of applicants exceeds the number of spaces available, the applicant intends to forego a lottery selection process, the applicant may not be eligible for federal funds under certain federal programs, including the federal charter schools grant program.]~~

~~(3)~~ (2) A charter applicant shall advertise its enrollment process using newspapers, bulletin boards and other methods designed to disseminate its availability to seek student enrollment and to ensure that there is equal opportunity for all parents and students to learn about the school and apply.

~~[(4)]~~ (3) A charter school shall not charge tuition or have admission requirements, except as otherwise provided in the Public School Code, Sections 22-1-1 et seq., NMSA 1978.

~~[(5)]~~ (4) In subsequent years of its operation, a charter school will give enrollment preference to previously properly admitted students who remain in attendance and siblings of students already admitted to or attending the school.

E. Any revision or amendment to the terms of the charter contract may be made only with the written approval of the authorizer.

F. A charter school shall be a nonsectarian, nonreligious, and non-home-based public school that operates within the geographic boundaries of a public school district.

G. A charter school shall comply with the Age Discrimination Act of 1975, Title VI of the Civil Rights Act of 1964, Title IX of the Education

Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Part B of the Individuals with Disabilities Education Act.

H. A charter school shall comply with the same federal and state audit requirements as do other public schools in the state.

I. A charter school shall meet all applicable federal, state, and local health and safety requirements.

J. A charter school shall operate in accordance with and under authority of state law.

K. A charter school shall provide equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

L. A charter school shall have an admissions process that does not discriminate against anyone on the basis of race, gender, national origin, color, disability, or age.

M. A charter school's head administrator or governing body shall not employ or approve the employment in any capacity of a person who is the spouse, father, father-in-law, mother, mother-in-law, son, son-in-law, daughter or daughter-in-law of a member of the governing body or the head administrator or any governing body members.

N. Applications to the commission for establishment of a state chartered charter school shall be made to the division at its Albuquerque office. Applications to a local school board for establishment of a locally chartered charter school shall be made to the superintendent of that district.

O. An application for a start-up school may be made by one or more teachers, parents, community members, by a public post-secondary educational institution or a nonprofit organization.

P. The chartering authority shall be responsible for reviewing all applications for charter schools. Prior to the submission of the applications, the division shall provide at least three (3) technical assistance workshops for prospective applicants on preparing a start-up application. The chartering authority shall not charge application fees.

Q. ~~[A review coordinator may be used to assist the chartering authority in reviewing charter school applications. When using a review coordinator, to assist the assistant secretary for the division shall designate a review coordinator for the commission. When using a review coordinator, unless the superintendent of a school district performs this duty, the superintendent shall appoint a review coordinator for the local school board. The review coordinator, or chartering authority if no review coordina-~~

~~tor has been designated, shall.] A review coordinator shall be used by the chartering authority to assist prospective applicants in the preparation of proposed charters. The assistant secretary for the division shall designate a review coordinator in the division for the commission. The superintendent shall appoint a review coordinator for the local school board, unless the superintendent of a school district performs this duty. Prior to the deadline for submission of applications established by the chartering authority, the review coordinator or superintendent and any prospective applicants shall confer in an attempt to identify:~~

(1) ~~[identify]~~ any concerns regarding noncompliance with requirements of the Charter Schools Act (Sections 22-8B-1 et seq., NMSA 1978), this rule or other applicable state or federal laws or regulations which would arise from the establishment or operation of the proposed charter school;

(2) ~~[identify]~~ any licensure, curriculum, or other educational concerns which would arise from the establishment or operation of the proposed charter school;

(3) ~~[identify]~~ any interests of the students, the school district or the community which would be adversely affected by the establishment or operation of the proposed charter school and describe the apparent adverse effects[;]

(4) ~~identify any additional information necessary or helpful to complete the charter school application and make arrangements to obtain the additional information, if possible; and~~

(5) ~~identify any other concerns which present obstacles to the approval of the proposed charter school].~~

R. ~~[When using a review coordinator,]~~ Prospective applicants are to direct any request for technical assistance and information through the authorizer's designated review coordinator. The review coordinator or superintendent, shall ensure that the appropriate staff members respond to requests from ~~[applicant]~~ prospective applicants for information on school operations, policies or practices which ~~[an applicant or prospective applicant regards]~~ prospective applicants regard as necessary to enable ~~[it]~~ them to present an approvable application. Prospective applicants may request information using the Inspection of Public Records Act (Chapter 14, Article 2 NMSA 1978). ~~[Applicants are discouraged from contacting school district or department employees directly to obtain information,]~~ A review coordinator may require that requests for information not made pursuant to the Inspection of Public Records Act be in a format or directed to a specific person or office in the school district or department. Prospective applicants should

not contact school district or department employees directly to obtain information.

~~[S. A charter applicant or prospective applicant shall respond to requests for information the chartering authority or the review coordinator regard as necessary to resolve concerns about the charter proposal; each shall negotiate in good faith in an attempt to resolve any concerns raised about the application.~~

~~¶] S. Prior to the public meeting at which the decision is made,~~ the chartering authority shall hold at least one (1) public meeting to obtain information and community input to assist it in its decision whether to grant a charter school application. At any such meeting, which shall be duly noticed and held pursuant to the Open Meetings Act (Chapter 10, Article 15 NMSA 1978), members of the chartering authority may ask questions of the charter applicant and that applicant shall have an opportunity, subject to reasonable time limitations, to respond to any questions or concerns raised by any members of the chartering authority, and ~~[to advise]~~ present to the chartering authority ~~[of any additional]~~ information that clarifies and verifies the information in the application that the applicant believes will assist the chartering authority in making its decision. Community input may include written or oral comments in favor of or in opposition to the application by the applicant, members of the local community and other interested individuals. Community input shall be provided within a time limit established by the chartering authority.

T. A charter applicant shall respond to requests for information that the chartering authority regards as necessary to verify and clarify issues identified in the charter application; each shall communicate in good faith in an attempt to verify and clarify issues identified in the charter application.

U. No earlier than three (3) days after the public meeting to obtain information and community input, the chartering authority shall rule on the application in a ~~[subsequent]~~ public meeting. The public meeting at which the decision is made shall be held within sixty (60) days after receipt of the application unless the applicant and chartering authority agree in writing to extend this deadline. ~~[A subsequent]~~ The public meeting in which the chartering authority rules on the application shall be held on or before the extended deadline. If not ruled upon within sixty (60) days, the charter application will be automatically reviewed by the secretary pursuant to the applicable provisions of Section 22-8B-7 NMSA 1978, 6.80.4.11 NMAC and 6.80.4.12 NMAC above. The charter applicant and the chartering authority may, how-

ever, jointly waive the deadlines set forth in this subsection, provided they do so in a signed ~~[writing]~~ written statement.

V. A chartering authority may approve, approve with conditions or deny an application. A chartering authority may deny an application where:

(1) the application is incomplete or inadequate;

(2) the application does not propose to offer an educational program consistent with the requirements and purposes of the Charter Schools Act (Chapter 22, Article 8B NMSA 1978);

(3) the proposed head administrator or other administrative or fiscal ~~[person]~~ persons were involved with another charter school whose charter was denied or revoked for fiscal mismanagement or the proposed head administrator or other administrative or fiscal member was discharged from a public school for fiscal mismanagement;

(4) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978;

(5) for a proposed state-chartered charter school, it does not request the governing body to be designated as a board of finance, or the governing body does not qualify as a board of finance; or

(6) the application is otherwise contrary to the best interests of the charter school's projected students, the local community or the school district in whose geographic boundaries the applicant seeks to operate.

W. If the chartering authority denies a charter school application or approves the application with conditions, it shall state its reasons for the denial or imposition of conditions in writing within fourteen (14) days of the meeting ~~[, provided that a vote is taken at the end of a public meeting and the purpose of the denial is merely to reflect in writing the record of and stated reasons for the vote of the chartering authority].~~ The written decision must be based upon the vote that was taken at the public meeting and reflect the stated reasons for the vote of the chartering authority to deny a charter school application or approve the application with conditions. If the chartering authority grants a charter, it shall deliver the approved charter to the applicant ~~[and a copy to the department within ten (10) days of the meeting].~~ The time within which to file notice of appeal shall commence upon receipt of the written denial. The chartering authority shall maintain a copy of the charter for its files.

X. If the approved charter contains a waiver request for release from department rules or the Public School Code ~~[the granting of which is discretionary,]~~ the applicant must follow the procedures on

requesting waivers from the department. The department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

Y. If the authorizer denies a charter school application or imposes conditions for approval that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to Section 22-8B-7 NMSA 1978 and section 6.80.4.14 NMAC [below]. [6.80.4.12 NMAC - Rp, 6.80.4.9 NMAC, 6/29/07; A, 6/30/08]

#### **6.80.4.13 CHARTER SCHOOL RENEWAL PROCESS AND RENEWAL APPLICATIONS:**

A. The governing body of a charter school seeking to renew its charter shall file its renewal application with a chartering authority no [later than] earlier than two hundred seventy (270) days prior to the date the charter [expires] expires. Commencing with any charters that are due to expire at any time after January 1, 2008, all applications for renewal shall be submitted no later than October 1 of the fiscal year prior to the expiration of the school's charter. The chartering authority shall rule in a public meeting on the renewal application no later than January 1 of the fiscal year in which the charter expires.

B. The governing body may submit its charter renewal application to either the commission or to the local school board of the district in which the charter school is located, but may not submit the renewal application to both authorizers simultaneously.

C. The application shall contain:

(1) a report on the progress of the charter school in achieving the goals, objectives, student performance standards, state minimum educational standards and other terms of the initial approved charter application, including the accountability requirements set forth in the Assessment and Accountability Act (Section 22-2C-1 et seq. NMSA, 1978);

(2) a financial statement that discloses the costs of administration, instruction and other spending categories for the charter school that is understandable to the general public, that will allow comparison of costs to other schools or comparable organizations and that is in a format required by the [commission] department;

(3) any changes to the original charter the governing board is requesting and any amendment to the initial charter, which were previously approved;

(4) a certified petition in support of the charter school renewing its charter status signed by not less than sixty-five (65) percent of the employees in the charter

school;

(5) a certified petition in support of the charter school renewing its charter status signed by at least seventy-five (75) percent of the households whose children are enrolled in the charter school as identified in the school's 120-day report of the fiscal year prior to the expiration of the charter;

(6) a description of the charter school facilities and assurances that the facilities are in compliance with the requirements of Section 22-8B-4.2 NMSA 1978; and

(7) a statement of the term of the renewal requested, if less than five (5) years; if a charter school renewal application does not include a statement of the term of the renewal, it will be assumed that renewal is sought for a term of five (5) years.

~~[D.] The provisions of Subsections N through Y of 6.80.4.12 NMAC shall apply to renewal applications.~~

[E.] D. The chartering authority shall rule on the renewal application in a public hearing no later than one hundred eighty (180) days prior to the expiration of the charter unless the applicant and the chartering authority agree in writing to extend this deadline. A subsequent public meeting shall be held on or before the extended deadline. If not ruled upon within sixty (60) days, the charter renewal application will be automatically reviewed by the secretary pursuant to the applicable provisions of [Section] Sections 22-8B-7 NMSA 1978; ~~6.80.4.13 NMAC~~ and 6.80.4.14 NMAC.

[E.] E. A chartering authority may refuse to renew a charter if it determines that:

(1) the charter school committed a material violation of any of the conditions, standards or procedures set forth in the charter;

(2) the charter school failed to meet or make substantial progress toward achievement of the department's minimum educational standards or student performance standards identified in the charter application;

(3) the charter school failed to meet generally accepted standards of fiscal management;

(4) the charter school violated any provision of law from which the charter school was not specifically exempted;

(5) the public school capital outlay council has determined that the facilities do not meet the standards required in Section 22-8B-4.2 NMSA 1978 ~~[or for]~~

~~[(6) any of the reasons set forth in Paragraphs (1) - (4) of Subsection K of Section 22-8B-6 NMSA 1978].~~

[G.] E. If the chartering authority refuses to approve a charter school

renewal application or approves the renewal application with conditions, it shall state its reasons for the non-renewal or imposition of conditions in writing within fourteen (14) days of the meeting; provided that if the chartering authority grants renewal of a charter, it shall deliver the approved charter to the applicant and a copy to the ~~[department within ten (10) days of the meeting]~~ chartering authority. The chartering authority shall keep a copy of the charter for its files.

[H.] G. If the approved charter contains a waiver request for release from department rules or the Public School Code ~~[the granting of which is discretionary]~~, the department shall notify the authorizer and the charter school whether the request is granted or denied and, if denied, the reasons thereto.

[I.] H. If the authorizer refuses to approve a charter school renewal application or imposes conditions for renewal that are unacceptable to the charter applicant, the applicant may appeal the decision to the secretary pursuant to [Section] Sections 22-8B-7 NMSA 1978 and 6.80.4.14 NMAC [below].

[J.] I. The provisions of this section shall apply to conversion schools. [6.80.4.13 NMAC - Rp, 6.80.4.8 NMAC, 6/29/07; A, 6/30/08]

#### **6.80.4.14 APPEALS TO THE SECRETARY:**

A. Right of appeal. A charter applicant may appeal to the secretary from any chartering authority decision denying a charter school application, revoking or refusing to renew a previously approved charter, or imposing conditions for approval or renewal that are unacceptable to the applicant. Appeals from suspension of governing bodies and head administrators by the secretary shall be governed by the procedures set forth in 6.30.6 NMAC ("Suspension of Authority of a Local School Board, Superintendent or Principal").

B. Notice of appeal

(1) Filing and service of notice. A charter applicant or governing body of a charter school that wishes to appeal a decision of a chartering authority concerning the denial, nonrenewal or revocation of a charter, or the imposition of conditions for approval or renewal that are unacceptable to the charter school or charter school applicant shall file and serve a written notice of appeal within thirty (30) days after service of the chartering authority's decision. One (1) original plus four (4) copies of the notice of appeal together with any supporting documents shall be filed with the secretary at the department's main office in Santa Fe. No notice of appeal, including exhibits and other related documents, shall be filed using

compact disks, floppy disks or email; instead, paper documents must be filed with the department.

(2) Grounds of appeal. The notice shall include a brief statement of the reasons why the appellant contends the chartering authority's decision was in error with reference to the standards set forth in Section 22-8B-7B that the authorizer acted arbitrarily or capriciously, rendered a decision not supported by substantial evidence, or did not act in accordance with law. The appellant shall limit the grounds of its appeal to the authorizer's written reasons for denial, non-renewal, revocation or imposition of conditions.

(3) Required attachments. The appellant shall attach to each copy of the notice of appeal:

(a) a copy of the chartering authority's written decision, together with a copy of the authorizer's minutes or draft minutes of the meeting if available; and

(b) a copy of the charter or proposed charter in question.

C. Filing and service of other documents. An original document shall be filed with the secretary at the department's main office in Santa Fe. Each party shall simultaneously serve a copy of all documents filed with the secretary including any attachments upon the other party at that party's address of record on appeal. A party may file documents other than a notice of appeal and required documents referenced at Paragraph (5) of Subsection D of 6.80.4.14 NMAC below, by email to the secretary provided that the email includes any attachments, as well as the sender's name and mailing address. Filings with the secretary shall reflect by certification of the sender that a copy of all documents being submitted is simultaneously being served on the other party, the method of service, and the address where filed. Filing or service by mail is not complete until the documents are received.

D. Pre-hearing procedures

(1) Within ten (10) days after receipt of the notice of appeal, the secretary shall inform the parties by letter of the date, time and location for the appeal hearing.

(2) Except for brief inquiries about scheduling, logistics, procedure or similar questions that do not address the merits of the case, neither party shall communicate with or encourage others to communicate with any employee of the department about a pending appeal unless the other party is simultaneously served with a copy of any written communication or has an opportunity to participate in any conversation by meeting or conference call. Nor shall any employee of the department initiate such prohibited communications. The secretary must disqualify himself or herself

from hearing an appeal if ~~he~~ the secretary determines, after learning of a prohibited communication, that ~~he~~ the secretary is unable to render an unbiased decision. Appellants will be provided a point of contact in the letter referenced in Paragraph (1) of Subsection D of 6.80.4.14 NMAC.

(3) The deadlines in 6.80.4.14 NMAC may be extended by the secretary for good cause. Good cause may include, but shall not be limited to, an agreement between the parties or a well-reasoned request from either party based upon hardship, a scheduling conflict or an event beyond the control of the requester.

(4) All submissions to the secretary on appeal shall focus on the factual and legal correctness of the chartering authority's decision in light of the grounds upon which a chartering authority may deny an application set forth in Section 22-8B-6K or the grounds for non-renewal or revocation as set forth in Subsection F of Section 22-8-12, NMSA 1978, and the standards for affirmation or reversal that the chartering authority's decision was arbitrary, capricious, not supported by substantial evidence or otherwise not in accordance with the law.

(5) Within ten (10) days after filing the notice of appeal, the appellant shall file one (1) original and four (4) copies with the secretary and serve upon the chartering authority one (1) copy of:

(a) the appellant's arguments for reversal of the chartering authority's decision, clearly labeled accordingly;

(b) the chartering authority's written decision that the appellant is appealing;

(c) the charter or proposed charter in question, of which only two (2) copies need to be filed; and

(d) any other materials related to the issues raised by the appellant which the appellant wishes to have considered in support of its appeal.

(6) Within ten (10) days after receiving the appellant's submissions, the chartering authority shall file one (1) original and four (4) copies with the secretary and serve upon the appellant one (1) copy of:

(a) the chartering authority's response to the appellant's arguments; and

(b) any other materials the chartering authority wishes to have considered in support of its decision.

(7) If requested by the secretary, the division and other department staff as appropriate shall review each party's submissions and prepare a report for the secretary which:

(a) analyzes and outlines the parties' contentions on appeal with reference to the standards of Subsection K of Section 22-8B-6 and Subsections B and E of Section 22-8B-7 NMSA 1978;

(b) sets forth the staff's recommendations for the secretary to affirm or reverse the chartering authority's decision, with or without reasonable conditions or changes to the charter, and the reasons for those recommendations.

(8) At least five (5) days before the hearing date, the division shall deliver its report and recommendations to the secretary and shall simultaneously serve a copy upon each party.

(9) While an appeal is pending, the parties are strongly encouraged to continue discussions and negotiations in an effort to resolve the matter by agreement and reestablish productive working relations. An appellant may withdraw an appeal at any time before the secretary reaches a final decision. If an appeal is withdrawn, the secretary shall approve an appropriate order of dismissal. The secretary's decision and order may incorporate the terms of any agreement reached by the parties. An appeal which has been withdrawn may not be refiled.

E. Secretary hearing and decision

(1) Unless an extension for good cause has been granted pursuant to Paragraph (4) of Subsection D of 6.80.4.14 NMAC ~~[above,]~~ within sixty (60) days after receipt of the notice of appeal, the secretary, after a public hearing that may be held in Santa Fe or in the school district where the proposed charter school has applied for a charter, shall review the decision of the chartering authority and make written findings.

(2) Participants at the hearing before the secretary shall be the designated representatives of the appellant, the chartering authority and the division and other department staff as appropriate.

(3) The time allotment for a hearing shall be ~~[two (2) hours]~~ three (3) hours. Both parties shall be allowed up to thirty (30) minutes for their presentations. Department staff shall be allowed twenty (20) minutes for their presentation. The appellant may reserve part of its thirty (30) minutes for rebuttal if desired. The order of presentations will be department staff, appellant, chartering authority and rebuttal by the appellant if time has been reserved. The parties may present remarks from whomever they wish in their thirty (30) minutes but must include any comments they wish to make on the staff recommendations within their allotted time. Presentations, questions or discussions that exceed these limits may be ruled out of order by the secretary. The secretary may ask questions of the staff, the parties or the secretary's counsel at any time and may take up to one (1) hour after the staff's and the parties' presentations for further ques-

tions, discussion and its decision. Unless stricken during the hearing for good cause or withdrawn, the parties can assume that the department staff and the secretary have reviewed their written submissions, which ~~shall~~ shall be deemed evidentiary submissions subject to be given increased or diminished weight based upon the oral presentations.

(4) All presentations and discussion before the secretary shall focus on the factual and legal correctness of the chartering authority's decision in light of the standards and grounds set forth in Subsection K of Section 22-8B-6, Subsections B, C or E of Section 22-8B-7 and Subsection F of Section 22-8B-12.

(5) The secretary may reverse the decision of the chartering authority, with or without the imposition of reasonable conditions, if the secretary finds that the chartering authority:

- (a) acted arbitrarily or capriciously;
- (b) rendered a decision not supported by substantial evidence; or
- (c) did not act in accordance with the law.

(6) The secretary shall reverse a decision of the chartering authority denying an application, refusing to renew an application or revoking a charter if ~~he~~ the secretary finds that the decision was based upon a determination by the public school capital outlay council that the facilities of the proposed or exiting charter school did not meet the standards required by Section 22-8B-4.2, NMSA 1978 and that the decision was:

- (a) arbitrary or ~~capriciously~~ capricious;
- (b) not supported by substantial evidence; or
- (c) otherwise not in accordance with the law.

(7) If the secretary reverses the chartering ~~authority's~~ authority's decision, the secretary shall remand the decision to the chartering authority with written instructions for approval of the charter. The instructions shall include specific recommendations concerning approval of the charter and any changes the secretary directs to remedy any concerns identified under Paragraphs (5) or (6) of Subsection E of 6.80.4.14 NMAC above.

(8) A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

F. Implementation of secretary's decision

(1) The department shall promptly serve a formal notice of the secretary's decision upon the parties to the appeal.

(2) If the chartering authority's

decision is reversed and remanded, the chartering authority, at a public hearing, shall approve the charter with any required changes within thirty (30) days following the receipt of the notice of the decision. If the chartering authority does not comply with the secretary's order, the secretary may take appropriate administrative or judicial action.

G. The provisions of this section shall apply to conversion schools. [6.80.4.14 NMAC - Rp, 6.80.4.10 NMAC, 6/29/07; A, 6/30/08]

#### 6.80.4.15 REVIEW ON THE SECRETARY'S OWN MOTION:

A. The secretary, on the secretary's own motion, may review a chartering authority's decision to grant a charter.

B. Within ten (10) days after the secretary moves to review, the secretary shall issue an appropriate order establishing procedures for the chartering authority and the charter applicant to submit information and arguments for review by the secretary and division staff.

C. Within sixty (60) days after the secretary moves to review, the secretary, at a public hearing that may be held in Santa Fe or in the district in which the proposed charter school applied for a charter, shall review the decision of the chartering authority and determine whether the decision was arbitrary and capricious or whether the establishment or operation of the proposed charter school would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978.

D. If the secretary determines that the charter would violate any standard in Subsection C of Section 22-8B-7 NMSA 1978, the secretary shall reverse the chartering authority's decision and remand the decision to the chartering authority with instructions to deny the charter application, suspend or revoke the charter.

E. The timelines in 6.80.4.15 NMAC may be extended by the secretary for good cause. Good cause may include but shall not be limited to an agreement between the parties, a reasonable request from either party or reasonable consideration of the secretary's previously established meeting schedule.

F. A person aggrieved by a final decision of the secretary may appeal the decision to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

G. The secretary shall promptly serve a copy of the ~~state board's~~ decision on the parties to the proceeding.

H. If the chartering authority's decision is reversed and remanded, the chartering authority, at a public hearing, shall deny or revoke the charter within thir-

ty (30) days following the receipt of the ~~state board's~~ secretary's decision. If the chartering authority does not comply with the secretary's order, the secretary may take appropriate administrative or judicial action.

[6.80.4.15 NMAC - Rp, 6.80.4.11 NMAC, 6/29/07; A, 6/30/08]

#### 6.80.4.16 QUALIFICATION FOR BOARD OF FINANCE DESIGNATION:

A. Within ninety (90) days of approval of its charter application, the governing body of a state-chartered charter school shall file a separate application with the commission seeking approval as a board of finance. This deadline may be extended by the commission for good cause shown.

B. The application shall include:

(1) an affidavit or affidavits, signed by the personnel who will be given the responsibility of keeping the financial records of the charter school, describing the training completed, professional licensure held and degrees earned by them;

(2) a statement signed by every member of the governing body that the governing body agrees to consult with the department on any matter not covered by the manual of accounting and budgeting before taking any action relating to funds held as a board of finance;

(3) a copy of a ~~declaration of~~ certificate of insurance that indicates that the person who will be entrusted with handling the funds of the charter school is adequately bonded ~~in an amount of at least the projected revenues and MEM of the charter school~~;

(4) a signed affidavit from each governing body member declaring that the member is not a governing body member of any other charter school and that the member was not a governing body member of another charter school that was suspended or failed to receive or maintain their board of finance designation.

C. Within thirty (30) days of filing of the application to qualify as a board of finance, the commission shall issue a decision approving or denying the application. A copy of the decision will be provided to the governing body and the commission.

[6.80.4.16 NMAC - N, 6/29/07; A, 6/30/08]

#### 6.80.4.17 NEW MEXICO SCHOOL FOR THE ARTS

A. Upon approval by the commission, a state chartered charter school may operate as the New Mexico school for the arts ("the school"), which shall be a statewide residential charter school for grades 9 through 12 offering intensive pre-professional instruction in the performing

and visual arts combined with a strong academic program that leads to a New Mexico diploma of excellence.

**B.** An application to the commission for approval of a charter shall contain assurances of compliance together with a plan for how the school will accomplish the following requirements contained in the New Mexico School for the Arts Act, being Laws 2008, Chapter 15, Sections 1 to 9:

(1) paying for all expenses associated with outreach activities and for room and board costs for students unable to pay all or part of the cost of room and board from a foundation or other private funding sources;

(2) working with a foundation or soliciting other private funding sources to obtain gifts, grants and donations to ensure that the school has adequate revenue to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(3) not using money received from the state other than charter school stimulus funds to make the payments described in Paragraph (1) of Subsection B of 6.80.4.17 NMAC;

(4) admitting an equal number of students from each of the state's congressional districts, to the greatest extent possible and without jeopardizing admissions standards;

(5) conducting its admissions process in a way that provides equal opportunity regardless of a student's prior exposure to artistic training and to the student's ability to pay for room and board; and

(6) conducting admissions criteria-free outreach activities throughout the state each year that acquaint potential students with the programs at the school, to include programs specifically for middle school students and workshops for teachers.

**C.** By July 1 after the first year the school has provided preprofessional instruction in the performing and visual arts and by July 1 every year thereafter, the school shall submit a report simultaneously to the division and the commission containing:

(1) non-personally identifiable demographic information about both applicants and students admitted to the school delineated by counties, congressional districts, socioeconomic status, gender and ethnicity; and

(2) the number of students who requested financial assistance for room and board, the total amount of financial assistance provided, and the amounts distributed delineated by the source of gifts, grants and donations received by the school.

**D.** During the planning year the school shall develop a sliding-fee scale subject to the following considera-

tions:

(1) the purpose of the sliding-fee scale is to defray all or part of the costs of room and board for students whose parents or guardians are financially unable to pay these fees;

(2) in determining ability to pay, the school may use a variety of methods including but not limited to:

(a) self disclosures in a financial aid application developed by the school;

(b) poverty thresholds as maintained by the United States census bureau;

(c) poverty guidelines as maintained by the United States department of health and human services;

(d) whether the public school that the student applicant most recently came from was a recipient of funds under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended;

(e) whether the student applicant for enrollment was eligible to receive free or reduced price school meals at the public school previously attended; and

(f) the amount or percentage of assistance an enrolled student received for room and board the prior school year from the school;

(3) the school shall submit its sliding-fee scale to the commission for initial approval during the planning year and may request changes at subsequent commission meetings for good cause shown.

**E.** It shall be the responsibility of the school to obtain adequate funding from private sources to pay annual outreach costs and to defray all or part of room and board fees for students financially unable to pay. No state funds except for charter school stimulus funds received and used during the planning year may be used for these purposes. Private funding sources available to the school shall include the use of a foundation or the soliciting and receipt of gifts, grants and donations. Failure to secure adequate funding for these purposes shall constitute grounds for denial or revocation of a charter.

**F.** Except for provisions of this rule related to admission of students by lottery, admission on a first-come first-serve basis, the ability to charge for residential fees, admissions criteria and location of the school anywhere in the state, all other provisions of this rule related to state-chartered charter schools shall apply to the school.

[6.80.4.17 NMAC - N, 6/29/07; 6.80.4.17 NMAC - N, 6/30/08]

#### **6.80.4.18 DISTANCE LEARNING**

**A.** A charter school offering or seeking to offer distance learning courses to students shall comply with 6.30.8

**NMAC.**

**B.** Any charter school offering or seeking to offer distance learning courses in New Mexico pursuant to the Charter Schools Act [Chapter 22, Article 8B NMSA 1978] must be physically located in the state of New Mexico.

[6.80.4.18 NMAC - N, 6/30/08]

~~[6.80.4.17]~~ **6.80.4.19 SEVERABILITY:** Any part of this rule found by adjudication before a competent tribunal to be contrary to law shall be stricken without affect to the remainder.

[6.80.4.19 NMAC- Rn, 6.80.4.17 NMAC, 6/30/08]

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

### **Notice of Repeal**

1.13.3 NMAC, Management of Electronic Records, is hereby repealed, effective June 30, 2008 and replaced by 1.13.3 NMAC, Management of Electronic Records, effective June 30, 2008.

## **NEW MEXICO COMMISSION OF PUBLIC RECORDS**

### **TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 13 PUBLIC RECORDS PART 3 MANAGEMENT OF ELECTRONIC RECORDS**

**1.13.3.1 ISSUING AGENCY:** State Commission of Public Records - State Records Center and Archives  
[1.13.3.1 NMAC - Rp, 1.13.3.1 NMAC, 6/30/2008]

**1.13.3.2 SCOPE:** all state agencies  
[1.13.3.2 NMAC - Rp, 1.13.3.2 NMAC, 6/30/2008]

**1.13.3.3 STATUTORY AUTHORITY:** Section 14-3-6 of the Public Records Act (Chapter 14, Article 3, NMSA 1978) gives the state records administrator the authority to establish and maintain an active, continuing program for economical and efficient management of the public records of state government.  
[1.13.3.3 NMAC - Rp, 1.13.3.3 NMAC, 6/30/2008]

**1.13.3.4 DURATION:** Permanent  
[1.13.3.4 NMAC - Rp, 1.13.3.4 NMAC,



6/30/2008]

**1.13.3.5 EFFECTIVE DATE:** June 30, 2008 unless a later date is sited at the end of a section.

[1.13.3.5 NMAC - Rp, 1.13.3.5 NMAC, 6/30/2008]

**1.13.3.6 OBJECTIVE:** The objective of this rule is to establish an architecture for the management of public records on electronic media that:

**A.** ensures proper records and information management practices are implemented and adhered to by state government entities;

**B.** ensures uniformity and facilitates the accessibility of public records of government entities

**C.** maintains accountability and preserves electronic records; and

**D.** provides guidance to users and managers of electronic systems in New Mexico government about:

(1) the issues associated with managing electronic records, special record keeping and accountability concerns that arise in the context of electronic government;

(2) archival strategies for the identification, management and preservation of electronic records with enduring value; identification and appropriate disposition of electronic records with short-term value; and

(3) improving access to state government records.

[1.13.3.6 NMAC - Rp, 1.13.3.6 NMAC, 6/30/2008]

**1.13.3.7 DEFINITIONS:**

**A. "Administrator"** means the state records administrator (Section 14-3-2 NMSA 1978).

**B. "Agency"** means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. 14-3-2 and 14-3-15 NMSA 1978.

**C. "Application"** means a software program designed for end user to do work, such as word processing, accounting, or illustrating. Software programs such as wordperfect, excel, and pagemaker are examples of end user applications.

**D. "Archives"** means a place where public records or other historical documents are kept.

**E. "Commission of public records"** means the governing body of the state records center and archives.

**F. "Computer"** means an electronic device designed to accept data (input), perform prescribed mathematical and logical operations at high speed (processing), and supply the results of these

operations (output). This includes, but is not limited to, mainframe computers, minicomputers, and microcomputers, personal computers, portable computers, pocket computers, tablet computers, telephones capable of storing information, PDAs, smart phones and other devices.

**G. "Custodial agency"** means the agency responsible for the maintenance, care, or keeping of public records, regardless of whether the records are in that agency's actual physical custody and control.

**H. "Custodian"** means the person (guardian) responsible for the maintenance, care, or keeping of a public body's records, regardless of whether the records are in that person's actual physical custody and control. The statutory head of the agency using or maintaining the records or their designee.

**I. "Custody"** means the guardianship or records, archives, and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

**J. "Data"** is the plural for "datum" which means a single piece of information. Data refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures, or symbols.

**K. "Database"** means a structured collection of records or data that is stored in a computer system. A database relies upon software to organize the storage of the data and to enable a person or program to extract desired information.

**L. "Destruction"** means the disposal of records of no further value by shredding, burial, incineration, pulping, electronic overwrite, or some other process, resulting in the obliteration of information contained on the record.

**M. "Disposition"** means the final action that puts into effect the results of an appraisal decision for a series of records; i.e., transfer to archives or destruction.

**N. "Draft copies"** means the working copies (rough versions) of documents prior to a draft final (conclusive document) being produced.

**O. "Draft final"** means the conclusive document produced.

**P. "Electronic records"** means records whose informational content has been encoded and recorded on a medium like magnetic tape, drums, discs, or punched paper tape and can be retrieved by finding aids known as software documentation. The encoded information is retrievable only with the help of a computer.

**Q. "Filing"** means the process of sequencing and sorting records to make them easy to retrieve when needed.

**R. "General schedule"**

means records retention and disposition schedule that specifies the disposition of support records common to many offices or agencies within government

**S. "Human readable form"** means information that can be recognized and interpreted without the use of technology.

**T. "Information"** means data that has been transformed and made more valuable by processing.

**U. "Information system"** means an electronic framework by which hardware and software resources are coordinated to manipulate and convert inputs into outputs in order to achieve the objective of an enterprise.

**V. "Information system database"** means a subset of logically arranged data stored on media accessible by the computer.

**W. "Life cycle"** means the life span of a record from its creation or receipt to its final disposition.

**X. "Medium, media"** means the physical material on which information can be recorded.

**Y. "Microforms"** means microfilm media, including reels, fiche, jackets, and computer output microfilm (COM) containing micro images.

**Z. "Non-records or non-essential records"** means records listed on a records retention schedule for routine destruction, the loss of which presents no obstacle to restoring daily business. The following specific types of materials are non-records: extra copies of correspondence documents preserved only for convenience of reference blank forms or books which are outdated materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the office or agency preliminary and non-final drafts of letters, reports, and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of the agency, board, department, or subdivision thereof is reached shorthand notes, stenographic tapes, mechanical recordings which have been transcribed, except where noted on agency retention schedules routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above stocks of publications already sent to archives and processed documents preserved for supply purposes only form and guide letters, sample letters, form paragraphs subject files, including copies of correspondence, memoranda, publications, reports, and other information received by agency and filed by subject (also referred to as reading files or information files).

**AA. "Operating system"**

means the master control software that runs a computer. When the computer is turned on, the operating system is the first program that gets loaded into the memory of the machine.

**BB. "Permanent records"** means records considered being unique or so valuable in documenting the history or business or an organization that they are preserved in an archives.

**CC. "Permanent archival records"** means records identified in either general records retention and disposition schedule or a program records retention and disposition schedule possessing a retention requirement of transfer to the SRCA.

**DD. "Personal digital assistant"** means a handheld device that combines computing, telephone, fax, and networking features. PDAs are also called palmtops, hand-held computers and pocket computers. A PDA is a small computer that literally fits in your palm. Palmtops that use a pen rather than a keyboard for input are often called hand-held computers or PDAs. Because of their small size, most palmtop computers do not include disk drives. However, many contain slots in which you can insert disk drives, modems, memory, and other devices. Palmtops are also called PDAs, hand-held computers and pocket computers.

**EE. "Program"** means a coded set of instructions, written by humans, that directs a computer's functions. The program can be stored on disk (in which case the program is software) or in a chip (which is firmware).

**FF. "Public records"** means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business, preserved or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities or the government, or because of the informational and historical value of data contained therein (14-3-2 NMSA 1978).

**GG. "Records"** means information preserved by any technique in any medium now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

**HH. "Records center"** means a facility designed and constructed to provide low-cost, efficient storage and reference service on records that have become inactive but have not reached their disposition date. The state records center, as defined by 14-3-2 (E), NMSA 1978, is the

"...central records depository which is the principal state facility for the storage, disposal, allocation or use of non-current records of agencies, or materials obtained from other sources."

**II. "Records custodian"** means the statutory head of the agency or their designee.

**JJ. "Records liaison officer"** means the individual in the custodial agency designated by the records custodian to cooperate with, assist, and advise the state records administrator in the performance of the administrator's duties (14-3-4, NMSA 1978). The records liaison officer in an agency is responsible for implementing the records retention and disposition schedules within their agency. The records liaison officer is also responsible for authorizing the storage and or destruction of their agency's records.

**KK. "Records retention and disposition schedules"** means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

**LL. "Records series"** means file units, documents, or electronic records arranged according to a filing system or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or share some other relationship arising from their creation, receipt, or use.

**MM. "Recycle bin"** means an icon on a microsoft windows based operating system desktop that represents a directory where deleted files are temporarily stored. This enables and user to retrieve files that you may have accidentally deleted or delete the files permanently.

**NN. "Scheduling"** means the action of establishing retention periods for records and providing for their proper disposition at the end of active use.

**OO. "Smart phones"** means a phone that uses an identifiable operating system, often with the ability to add applications (e.g. for enhanced data processing, internet connectivity or electronic message).

**PP. "Software"** means the set of instructions for a computer to carry out a specified procedure.

**QQ. "System"** means an integrated framework that has one or more objectives and coordinates the resources needed to convert inputs to outputs. The word system often is used in a generic sense in referring to a computer setup—what type of computer and cpu operating system, how much hard disk space, how much memory, or what software package and peripherals are used.

**RR. "Transfer"** means moving inactive records to a records center or archives. Moving records into the SRCA also includes the transfer of custody from the custodial agency to the SRCA.

**SS. "TIFF"** means tagged image file format, a standardized format for storage of digitalized images, which contains a header or tag that defines the exact data structure of the associated image.

**TT. "USB flash drives"** means a small, portable flash memory card that plugs into a computer's USB port and functions as a portable hard drive. USB flash drives are small and can plug into any computer with a USB drive.

**UU. "Vital records"** means records essential to the continuing operation of an agency. They are either intrinsically irreplaceable or irreplaceable because copies do not have the same value as the originals. They are essential to the continuity of services during a disaster or to the restoration of daily business when it has been interrupted. They are the records that would be required to protect the legal and financial interests of an agency, preserve the rights of the people, and resume operations after a major disaster like fire or flood.

**VV. "Voice mail"** means a telecommunication message that is digitized and can be stored and subsequently retrieved in audio or visual format.

**WW. "Working copies"** means the rough versions of documents prior to a conclusive document produced. [1.13.3.7 NMAC - Rp, 1.13.3.7 NMAC, 6/30/2008]

#### 1.13.3.8 ACRONYMS:

**A. "BMP"** stands for microsoft windows bitmap format.

**B. "JPEG"** stands for joint photographic experts group

**C. "MPEG"** stands for moving picture experts group.

**D. "PDA"** is short for personal digital assistant.

**E. "PDF"** stands for portable document format.

**F. "RRDS"** stands for records retention and disposition schedule.

**G. "SGML"** standard generalized markup language.

**H. "SRCA"** stands for the New Mexico state records center and archives.

**I. "TIFF"** stands for tagged image file format.

**J. "USB"** stands for universal serial bus.

[1.13.3.8 NMAC - Rp, 1.13.3.8 NMAC, 6/30/2008]

1.13.3.9 [RESERVED]

### 1.13.3.10 INTRODUCTION: ACCOUNTABILITY

A. Public acceptance of New Mexico state government and the roles of its employees depend on trust and confidence. This trust is founded on all of government being accountable for its actions. Access to full and accurate records is at the heart of the accountability process. Records are the means by which the evidence of past and current action, decisions, procedures and policy are preserved for future analysis and access.

(1) Records are fundamental tools in the business of government and their absence can lead to inefficiencies or failure in operational procedures. The absence of records can open agency employees to accusations of fraud and impropriety, political embarrassment and an inability to defend the state in cases of legal action or claims against the government.

(2) Records can also be transferred from one medium to another and from one context to another through copying, imaging or digital transfer. Electronic records are easily updated, deleted, altered and manipulated. If appropriate measures are not taken, the essential characteristics of records (content, structure, context) can be altered or lost in the process. Careful planning and system design are required to ensure that these characteristics of records are both captured and maintained.

(3) These guidelines are intended to provide guidance to agencies on the management of electronic records throughout their entire lifecycle, from initial system design to the final disposal or permanent preservation of state records. This "records lifecycle" view is critical in an electronic environment because, by the disposition stage (when actions are taken regarding records no longer needed for current government business), records may be irretrievable if not properly managed while they are in active use. The administrative rule covers records created using all types of computerized environments, including such diverse elements as personal computers, distributed networks, mainframes, spatial data systems, and multimedia systems.

B. Although there exists sensitive or confidential data, all data generated by a state or local government agency in New Mexico are public unless they have been legally declared closed to public inspection by state or federal statute. State agencies are not empowered to make exemptions to the Inspection of Public Records Act (Sections 14-2-1 through 14-2-12 NMSA 1978). Agency heads often have valid concerns about security and privacy rights, thus, questions related to concerns about specific sensitive information or data elements are more properly addressed to legal council for the agency or to the office

of the attorney general for the state of New Mexico. Exceptions to this general rule exist throughout state and federal law.

C. In a court of law the evidence may be in documentary, oral, audio-visual, electronic or object form. It shall satisfy the tests of evidence and be admissible in that legal context. Evidence as a concept, however, is not confined to legal contexts. Within business and public sector environments, the evidence from previous actions and decisions is used as a basis for the formulation of new decisions and actions. Organizations keep records as evidence or proof that an activity or transaction did or did not occur. Beyond this more immediate use, researchers also use records as historical evidence on which to base their conclusions.

D. There is no specification in the Inspection of Public Records Act (Sections 14-2-1 through 14-2-12 NMSA 1978) of any means which access to public records shall take. The means of access is left to the discretion of the public agency. The public should not be given direct access if such an action would compromise the security and safety of the records themselves. Common sense urges caution where valuable records are concerned. Hardcopy and digital file storage areas may contain both "open" and "closed" records material, and the alteration, destruction, or theft of files represent clear dangers to public records. If a member of the public demands access that the agency believes will compromise records security but that is not otherwise clearly prohibited in federal or state statutes, that agency is urged to contact their legal council or the office of the attorney general for guidance.

[1.13.3.10 NMAC - Rp, 1.13.3.10 NMAC, 6/30/2008]

### 1.13.3.11 SYSTEM RELIABILITY, THE CREATION AND CAPTURE OF ELECTRONIC RECORDS AND THE MAINTENANCE AND ACCESSIBILITY OF THE RECORDS

A. The electronic records system should be administered and configured with the best practices in mind for information and resource management to ensure the reliability of the records being produced. Towards this goal of reliability the life cycle of the records shall be taken into account where some records may finite life spans others may have an indefinite life may have to be viewed or regenerated forever. To this end there are four aspects: preservation- the information shall be in a form that can be physically preserved; the information shall possess the quality of accessibility; the information shall be able to be read (readability); and the information shall retain its comprehensibility - to be read and understood in their original context

without question.

(1) Information shall be physically preserved. The information in an electronic system shall be preserved in a physical media that is of sufficient quality and capacity to contain the information being preserved. There are many ways to accomplish this and the commission of public records (state records center and archives) does not endorse, warrant, certify, or approve any particular hardware or software product or product combination used in any electronic records management activity. The implementation of these processes, including the specifications for products used therein, remains at the discretion of the individual public agency. However, the records should be full and accurate to the extent necessary to: facilitate action by current and future employees, at all levels; allow for proper scrutiny of the conduct of business by anyone authorized to undertake such scrutiny; and protect the financial, legal and other rights of the agency, its clients and anyone else affected by its actions and decisions. The agency shall provide convincing, documented evidence that the electronic records were created, protected, and otherwise managed in accordance with systems and procedures designed to ensure the reliability, accuracy, and security of both the records and the process or system used to produce the records. Many paper records are being eliminated when the information has been placed on magnetic, optical, or other data processing media. In these cases, the information on the data processing medium shall be retained for the length of time specified in records retention and disposition schedules and is subject to the same confidentiality and access restrictions as paper records.

(2) Information shall be accessible. When conducting transactions electronically, the first challenge is to maintain records in a way that will enable retrieval of all documents relevant to a transaction when they are needed. The second challenge is to ensure that the records are not retained for any longer than necessary, in order to avoid both overloading systems and to avoid indiscriminate dumping. A special problem with electronic records is that they lack familiar physical and visual clues about their origins, such as official letterhead, or their authenticity, such as written signatures. Special measures shall be taken to ensure that they are also reliable and authentic. Paper record-keeping systems have traditionally been employed to file letters, minutes, reports, spreadsheets, invoices, notes, etc. These systems employ classified and indexed files at a subject or transaction level to consolidate and co-locate the documents generated or received in the course of a business activity. Separate folders provide a business context and link the

individual documents to a particular transaction and into the wider agency record-keeping system. In recent years, agencies have adopted records management, document management, workflow and imaging software. Regardless of the technology, however, the objective remains the same: capture records so that they can be easily retrieved at a later date, understood, and interpreted as evidence of what transpired in an agency.

(a) the record shall have information content that is (and continues to be) an accurate reflection of what actually occurred at a particular time in the function, activity or transaction in question; and

(b) be able to be reconstructed electronically when required, so that each component is brought together as a whole and presented in an intelligible way; and

(c) possess a unique identifier or indexing that facilitates in the access of the information through the use of folder naming conventions or through searches or queries; and

(d) have been officially incorporated (either actively or passively) into an agency's or person's record-keeping system.

(3) Information shall be readable. Electronic records may exist independently of their physical format; however, by reducing records to their essential characteristics, we can allow for the existence of records, regardless of the current technology. Systems shall link the content of a record to its administrative or business context. In electronic environments, the essential characteristics rarely sit neatly together in a single, format-based package. Though all of the elements of an electronic record may exist within a single computer file, they may also be distributed across the entire state network. The integrity of these elements and the links between them are much more important than where they physically reside. If one is not able to place records in their appropriate administrative context, then they have seriously diminished value as evidence. In order for records to serve as evidence, three essential characteristics shall be maintained. Whenever one of the characteristics is altered, the ability of records to accurately reflect the activities of an agency is diminished. This means that records shall possess the following essential characteristics:

(a) content, that which conveys information (e.g. text, data, symbols, numerals, images, and sound);

(b) structure, appearance and arrangement of the content (e.g. relationships between fields, entities, language, style, fonts, page and paragraph breaks, links and other editorial devices);

(c) context, be able to be placed in

context so that the circumstances of its creation and subsequent use by an agency or person can be understood in conjunction with its information content.

(4) Information shall retain its context. One of the major differences between electronic records and those on traditional media is that electronic records are not human-readable, thus their physical appearance alone does not provide sufficient information to determine their origin, purpose, uses or other aspects of the context in which they were created and maintained. Maintaining content, structure and context of electronic records is, therefore, both more vital and difficult than with traditional records. Meeting these conditions requires high quality records management and a sustained commitment, on the part of state agencies and the SRCA.

**B.** The creation and capture of electronic records.

(1) Strategies for capturing electronic records will differ, depending on the opportunities presented by an agency's hardware and software environment. The complexity of electronic records and the rapid acceleration of new formats and technologies provides the background for the creation of the myriad of electronic records that are being created from simple text records to modeling simulations. Even records that might be perceived as simple record formats can contain a complexity that underlies the information, for example a spreadsheet can be viewed on a monitor as figures; however, within the spreadsheet formulas can be found. Additionally, some records may require several elements at one to become a coherent record, for example a multimedia presentation consisting of audio, text, and video. The organizational environment will influence the point at which records are captured. This will include perceptions about what constitutes a record, assignment of responsibility, agency requirements to create records, and staff understanding of the technology involved and when and where a record should be captured and when a draft or non-record crosses the threshold and becomes a record.

(a) Local environment, where the initial work is done to create a draft. Often time, in the creation of correspondence the local environment will hold a copy of a finalized product, which is then printed, and the official copy is placed in a paper folder. What remains in the local environment is then a copy and can be considered a non-record.

(b) Group environment, where recognizable drafts are produced and maybe shared with peers and unit management. The record creator is responsible for capturing his or her own records and assigning management practices to them at the point

of creation. This could be implemented as a screen the user fills in before documents can be saved or messages can be sent. A user interface could be designed so that users can choose between a number of icons representing business tasks or style templates, e.g., "send policy" or "make appointments." The choice of icon can engage the appropriate application, distribution lists, style sheets, and records disposal authorities. The sender thus affects scheduling but need not make conscious decisions about assigning retention periods to records.

(c) Corporate environment, where centralized applications such as databases and corporate level wide information are found.

(2) The reliability of a record, whether it is a traditional paper based record, analog or digital is dependent to varying degrees on a level of competence or skill of the creator of the record and formal training or support programs can ensure that staff understand and adhere to established policies and procedures. In the past, the need for grammar, spelling and typing skills were required in the business realm, currently the entry level skill of a person in a business environment requires a rudimentary understanding of computer systems. To this end varying levels of training, education, and skill are required from those creating records to those who are administering or maintaining electronic records systems. Training for the management of electronic records, all records creators should have, based on their level of responsibility in their respective agency, training in basic records management, advanced records management and archival preservation.

(3) Audit trails can provide a means to assist in accomplishing security related objectives such as individual accountability, the reconstruction of events, intrusion detection, and problem identification. An audit trail should include sufficient information to establish what events occurred and who or what caused them. The audit trail can also be used to document the reliability of a system as well as attest to the integrity of the records maintained in the system. Ideally, the audit trail should be generated by the system to include such things as the transaction, maintenance and disposition of records, fields or of the system itself.

(4) The storage of records on electronic media. Draft finales (or official copies of record) may be created and maintained solely in electronic media. Electronic records with a set retention that can be destroyed within 10 years may be sent to the SRCA for storage in the electronic media vault and upon meeting their retention may be destroyed by the SRCA

per 1.13.30 NMAC *Destruction of Public Records*.

(5) Draft finales (or official copies of record) may be created and maintained solely in electronic media.

(6) Preservation- the records shall be in a form that can be physically preserved. Records created and maintained on local hard drive(s) are the working copies or draft copies of official records created by and for state government. Once a draft final is produced (paper, microfilm, electronic), these working copies or draft copies are no longer needed and are considered non-records. Final drafts shall be generated in paper, microform, or electronic media. Draft copies or working copies shall be transferred to recycle bin for destruction after no longer needed for reference.

(7) Records may be created and maintained on a system network drive(s). Records placed on a network drive(s) are meant to be shared by the users of the network. Users not creating a record (document) may only have read and copy access to the record. Records on the network drive(s) may be draft copies or final drafts of agency documents. Electronic records from outside sources may also be placed on an agency's network drive(s) as a means of disseminating information. Records placed on network drive(s) are not the agency's official copies of record. They are placed on network drives to disseminate information only and are considered non-records. Non-records may be destroyed by the custodial agency when the record no longer has any informational value to the agency. However, if a record has been created on a network drive, it shall be copied to paper, microform or electronic media and maintained until its retention has been met. To ensure that records maintained on a network drive(s) are accessible and to ensure that proper records and information management principles are followed, the following guideline shall be adhered to.

(a) Electronic file folders shall be created on the network drive(s) for filing electronic records (documents). The electronic records may be draft copies (working copies) or draft finals.

(b) Names of electronic file folders shall correspond to record series listed and described in records retention and disposition schedules issued by the state records center and archives.

(c) If final draft has been created on network drive, generate copy in paper, microform, or electronic media and retain elsewhere until minimum retention has been attained. When retention has been met, destroy record per 1.13.30 NMAC *Destruction of Public Records and Non-records*.

(d) Electronic files that are located on a network share and are deleted from

a user's desktop computer, they are deleted permanently and are never transferred to a recycle bin. For information on the destruction of records, see 1.13.30 NMAC *Destruction of Public Records and Non-records*.

(8) To insure the agency always has available the necessary electronic records to conduct its agency's program requirements, agency shall backup all electronic records and databases at appropriate time periods and in an appropriate manner to insure that electronic records and databases are protected from accidental or deliberate loss. Electronic records and databases should be backed up, at minimum, on a weekly basis. If major changes or additions are made to electronic records or database groups during the week, backups should be made immediately instead of waiting for the normally scheduled backup. Electronic records and databases that are seldom changed or updated would need to back up only as major changes to the information occur. For cycle rotation of system backup refer to RRDS for General Administrative Records, *operations system backup* 1.15.2.302 NMAC.

(9) Different backup media (floppies, reels, cassettes, optical disks, disk packs, USB flash drives) retain information for different periods of time before deterioration of the information may begin. The longer the backup media will be retained without replacement of information, the more stable the backup media needs to be.

C. The maintenance and accessibility of electronic records. Agencies shall safeguard all electronic records to insure that individuals do not alter, erase, or in any way change the content of the record for fraudulent purposes. In addition to safeguarding against deliberate tampering with records, agencies shall also guard against storage media deterioration and technology changes that can leave electronic records inaccessible over a period of time because of hardware or software obsolescence. To eliminate the possibility of creating a situation where information can no longer be retrieved, agencies shall provide for future record accessibility by migrating all electronic records when there are major changes to the next generation of hardware or software; or migrating only current electronic records to new hardware or software, and converting records not migrated to "human readable form".

(1) The migration of information on electronic media. Agencies shall safeguard all electronic records to insure that individuals do not alter, erase, or in any way change the content of the record for fraudulent purposes. In addition to safeguarding against deliberate tampering with records, agencies shall also guard against storage media deterioration and technology changes

that can leave electronic records inaccessible over a period of time because of hardware or software obsolescence. To eliminate the possibility of creating a situation where information can no longer be retrieved, agencies shall provide for future record accessibility by:

(a) migrating all electronic records when there are major changes to the next generation of hardware or software; or

(b) migrating only current electronic records to new hardware or software, and converting records not migrated to "human readable form".

(2) Backup of electronic records. To insure the agency always has available the necessary electronic records to conduct its agency's program requirements, agency shall backup all electronic records and databases at appropriate time periods and in an appropriate manner to insure that electronic records and databases are protected from accidental or deliberate loss.

(a) Backup frequency. Electronic records and databases should be backed up, at minimum, on a weekly basis. If major changes or additions are made to electronic records or database groups during the week, backups should be made immediately instead of waiting for the normally scheduled backup. Electronic records and databases that are seldom changed or updated would need to back up only as major changes to the information occur. For cycle rotation of system backup refer to RRDS for General Administrative Records, *operations system backup* 1.15.2.302 NMAC.

(b) Backup media. Different backup media (floppies, reels, cassettes, optical disks, disk packs, USB flash drives) retain information for different periods of time before deterioration of the information may begin. The longer the backup media will be retained without replacement of information, the more stable the backup media needs to be.

(3) Permanent, permanent-archival, or long-term records on electronic media. Permanent public records are either maintained permanently by and at the custodial agency or by the custodial agency in an appropriate environmental setting. Permanent-archival records are scheduled in the custodial agency's records retention and disposition schedule to be transferred to the SRCA permanently or transferred to the SRCA for review and final disposition.

[1.13.3.11 NMAC - Rp, 1.13.3.11 NMAC, 6/30/2008]

**1.13.3.12 PERMANENT ELECTRONIC RECORDS MAINTAINED BY THE CUSTODIAL AGENCY.** If the custodial agency opts to maintain their permanent electronic records on-site, the custodial agency shall develop and implement guidelines and procedures

that address the following elements of an on-site archival program.

**A. Policy.** Develop an archives repository written policy for access to agency permanent electronic records that addresses the following areas:

- (1) program objectives;
- (2) system reliability;
- (3) custody - legal and physical;
- (4) rationale for alternatives adopted;
- (5) processibility;
- (6) migration;
- (7) archives repository or out-source implementation; and
- (8) audit for compliance.

**B. Quality control.** Develop written quality control procedures that take into account the following:

- (1) utilization of the functionalities of an archival preservation system software;
- (2) document any action taken with regard to facilitating long-term access to electronic records;
- (3) insert documentation records into the encapsulation wrapper that contains the relevant electronic records; and
- (4) periodic quality control audits.

**C. Environmental control and monitoring program recommendation.** Ensure the continued readability of electronic records by putting in place a program that provides for a stable storage environment and good care and handling procedures. Such a program should include the following:

- (1) maintain a stable storage environment in which the temperature is 59 plus or minus 5 degrees fahrenheit and the relative humidity (RH) is 40 percent;
- (2) install a filter system to remove airborne dust particles and gas pollutants;
- (3) prohibit the consumption of food and beverages and smoking in the storage facility;
- (4) implement a program to read annually a statistical sample of the storage media to identify real or impending catastrophic loss of information;
- (5) select all storage units (e.g., videocassette tapes, computer disks) annually if there are fewer than 50 of them;
- (6) select a 20 percent random sample of the storage media when the total number of storage units ranges between 50 and 1809;
- (7) select a random sample of 381 items of the storage media when the total number of storage media is 1810 or greater; and
- (8) rewind all tapes under constant tension after processing.

**D. Transfer of records.** Guidelines for the transfer of electronic

records that include the following:

(1) select up to three storage media that are widely used by agencies in their current operations (e.g., 3480 tape cartridges, digital linear tape, and CR-ROM) that may be used to transfer electronic records to the archives repository;

(2) select a standard archival storage medium and encourage agencies and organizations to use it when transferring electronic records; and

(3) all electronic records transferred shall be encoded with a standard encoding scheme such as ASCII.

**E. Reformat electronic records.** Guidelines for the reformatting of electronic records that include the following:

(1) select either digital linear tape or other suitable tape cartridges as the storage medium;

(2) reformat electronic records at the time of their transfer to the archives repository or when new storage devices and media are installed;

(3) ensure the authenticity of reformatted electronic records by employing a strict quality control procedure that may include bit or byte comparisons, comparisons of hash-digest, or digital time stamping;

(4) utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when reformatting electronic records; and

(5) at the time of reformatting, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

**F. Copy electronic records.** Guidelines for the periodic copying of electronic records that include the following:

(1) copy electronic records at the time of their transfer to the archives repository;

(2) copy electronic records every ten years in the absence of the installation of new storage devices and media;

(3) copy electronic records when the annual readability sample discloses ten or more temporary or read "errors" in a dataset;

(4) ensure the authenticity of copied electronic records by employing a strict quality control procedure that may include bit/byte comparisons, comparisons of hash-digest, or digital time stamping;

(5) utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when copying electronic records; and

(6) at the time of copying, create two copies, one of which would be consid-

ered a "backup" that is stored at an off-site location.

**G. Convert electronic records.** Guidelines for the conversion of electronic records that include the following:

(1) the conversion of authentic electronic records from one software environment to another shall not result in the loss of any structure, content, or context;

(2) convert authentic electronic records whenever there is a software upgrade or a new software application environment is installed;

(3) adopt TIFF, PDF or SGML as a standard storage format; at the time of conversion encapsulate aggregated electronic records along with relevant documentation as SGML records;

(4) ensure the authenticity of converted electronic records by employing a strict quality control procedure that may include bit/byte comparisons, comparisons of hash-digest, or digital time stamping; utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when converting electronic records;

(5) exercise the option of non-conversion of authentic electronic records only as a last resort when the risk of the loss of authenticity or processibility is acceptable; and

(6) at the time of conversion, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

**H. Migrate electronic records.** Procedures for the migration (or non-migration) of electronic records that include the following:

(1) establish guidelines that unambiguously delineate the circumstances under which migration of electronic records will be carried out;

(2) establish guidelines that unambiguously delineate the circumstances under which non-migration of electronic records will be carried out;

(3) incorporate into the migration procedure the following ten steps for migrating electronic records from legacy information systems:

(a) incrementally analyze the legacy information system;

(b) incrementally decompose the legacy information system structure;

(c) incrementally design the target interfaces;

(d) incrementally design the target applications;

(e) incrementally design the target database;

(f) incrementally install the target environment;

(g) incrementally create and

install the necessary gateways;

(h) incrementally migrate the legacy databases;

(i) incrementally migrate the legacy applications;

(j) incrementally migrate the legacy interfaces;

(k) incrementally cut over to the target information;

(4) establish migration quality control procedures that include testing the migration software with a sample of records to confirm that no degradation in the records occurs;

(5) validate migrated electronic records with records in the source legacy information system to ensure that no errors occur;

(6) if financial or technical resources preclude the migration of electronic records without some loss in content, structure, or context, document all the activities undertaken in order to establish the reliability of the new records that come into existence;

(7) in executing a "non-migration" option that transfers electronic records to paper or microfilm a visual inspection of a sample of these records should be compared with their electronic counterparts.

**I.** Starting a long-term electronic records access program. Guidelines and procedures that include the following:

(1) develop a policy that calls for an integrated information technology plan that serves the overall goals and mission of the archival repository;

(2) develop a five to seven year information technology plan that is based upon a realistic assessment of the financial resources that are likely to be available to the organization;

(3) design a system that is geared to the specific needs and resources of the archival repository and for which computer literate and technically competent staff is available; and

(4) assess the long-term costs and benefits of a "scaled back program" and where the benefits are marginal consider other storage alternatives such as paper or microfilm.

**J.** Multi-institutional cooperative programs. Guidelines and procedures that include the following:

(1) develop a formal organizational structure for the participating archives repositories and a formal agreement (and legally binding) with the cooperative electronic records archives repository;

(2) guarantee funding of the program for five years;

(3) delineate explicitly the tasks to be carried out within specified time periods;

(4) require that the findings and

recommendations of this report be incorporated into the policy and procedures; and

(5) contract with a competent, independent third party to conduct an annual information technology audit of the cooperative electronic records repository and deliver a report with recommendations to the participating archives repositories.

[1.13.3.12 NMAC - Rp, 1.13.3.12 NMAC, 6/30/2008]

### 1.13.3.13 DISPOSITION OF ELECTRONIC RECORDS

**A.** The disposition of electronic record can have two possible avenues, either the information and the record media are destroyed or the information is obliterated. Unlike paper-based records the media for electronic records can remain useful and only the information needs to be destroyed thus the resulting best practices for the destruction of information. An agency will select the best practice based on the media, and the nature or sensitivity of the information. For a local hard disk, items one and two should be sufficient, for other magnetic, optical, or solid-state storage media, agency information systems staff should be consulted:

(1) erasure from electronic media and all back up media;

(2) emptying of electronic trash receptacle;

(3) witnessed overwriting of reusable magnetic media multiple times such as suggested by the US department of defense;

(4) witnessed degaussing of the magnetic media; and

(5) witnessed physical destruction of the media.

**B.** Permanent-archival records on electronic media transferred to the SRCA. Permanent-archival records are scheduled in the general records retention and disposition schedule or the custodial agency's records retention and disposition schedule to be transferred to the SRCA permanently or transferred to the SRCA for review and final disposition. When permanent public records on electronic media are transferred to the SRCA, the custodial agency shall meet the following criteria.

(1) Media. Records shall be transferred only on optical disc, adhering to the international organization for standardization 9660 or high sierra standard for readability using eight-dot three file naming.

(2) Format. Since data formats can become obsolete, only those formats with the widest support, and greatest permanence shall be used to store public records. The nature of the information stored shall dictate its storage format. For example:

(a) Audio information. Format this information as MPEG files.

(b) Audio and visual information. Format this information as MPEG files.

(c) Picture or graphic files. Format these files as JPEG, BMP, or TIFF files.

(d) General business information files. Format per the architectural configuration requirement published by the state information and technology management office regarding software utilized by state agencies.

(3) Metadata. Metadata shall be provided on either individual records (documents) or on the entire records series. Records shall be transferred with the following essential metadata fields:

(a) title

(b) subject;

(c) originator (name of custodial agency);

(d) dates (inclusive dates of records, dates records created);

(e) identifier (i.e., RRDS code, RRDS section number, schedule item number).

[1.13.3.13 NMAC - Rp, 1.13.3.13 NMAC, 6/30/2008]

### HISTORY OF 1.13.3 NMAC:

History of Repealed Material:

1.13.3 NMAC, Management of Electronic Records, filed 6/30/2003 - Repealed, 6/30/2008.

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION**  
**CHAPTER 13 PUBLIC RECORDS**  
**PART 8 NEW MEXICO**  
**OFFICE OF THE STATE HISTORIAN**  
**SERVICE LEARNING STUDENT**  
**INTERNSHIP PROGRAM**

**1.13.8.1 ISSUING AGENCY:** State Commission of Public Records - State Records Center and Archives

[1.13.8.1 NMAC - N, 6/30/08]

**1.13.8.2 SCOPE:** Eligible students meeting the requirements set forth in 1.13.8 NMAC.

[1.13.8.2 NMAC - N, 6/30/08]

**1.13.8.3 STATUTORY AUTHORITY:** Section 14-3-6 NMSA 1978 provides that the state records administrator shall adopt regulations necessary for carrying out the Public Records Act, which governs the management of the public records, including those held in the state archives.

[1.13.8.3 NMAC - N, 6/30/08]

[The program was first funded through a special appropriation in Laws 2007, Chapter 34, Section 4, Subsection E. Money to continue the program was included in the agency's subsequent fiscal year base budget.]

**1.13.8.4 D U R A T I O N :**  
Permanent  
[1.13.8.4 NMAC - N, 6/30/08]

**1.13.8.5 EFFECTIVE DATE:**  
June 30, 2008, unless a later date is cited at the end of a section.  
[1.13.8.5 NMAC - N, 6/30/08]

**1.13.8.6 OBJECTIVE:** To foster an understanding and appreciation of New Mexico history by providing compensated service learning internships to students interested in New Mexico history and culture.  
[1.13.8.6 NMAC - N, 6/30/08]

**1.13.8.7 DEFINITIONS:**

**A. Deliverable** means a tangible outcome or output produced by an intern.

**B. GPA** means grade point average.

**C. OSH** means office of the state historian.

**D. SRCA** means the state records center and archives.

**E. Service learning student internship** means a compensated, contractual relationship between, and of mutual benefit to, the selected student intern and the state records center and archives.

**F. Student** means a college or university undergraduate or graduate student meeting the qualification criteria for application and participation in the office of the state historian service learning student internship program.  
[1.13.8.7 NMAC - N, 6/30/08]

**1.13.8.8 ELIGIBILITY:**  
Applicants for internships shall meet the requirements described below.

**A.** Applicant shall be enrolled in an accredited college or university and working toward a degree at that institution.

**B.** Applicant shall be 18 years of age at the time of application and, if an undergraduate, have completed at least two semesters of study toward a degree.

**C.** Applicant shall have a GPA of at least 2.0 on a 4.0 scale, or the equivalent if a different grading scale is used.

**D.** Applicant shall complete and submit all required application materials as set forth in 1.13.8.10 NMAC.

**E.** Applicant shall have

the written approval of his or her academic advisor or department chair.

**F.** Recent college graduates may petition for a waiver of internship eligibility requirement by submitting a letter of interest to the state records administrator along with a copy of official transcripts. The waiver shall be accompanied by a letter of endorsement by the state historian.  
[1.13.8.8 NMAC - N, 6/30/08]

**1.13.8.9 TERMS AND CONDITIONS:**

**A.** Interns shall be compensated at a rate determined by budget availability and shall be based on the work proposed in the application, the needs of the OSH and the work products defined in the internship agreement.

**B.** The duration of an internship shall be one academic semester or the equivalent, unless the internship is a summer internship, which shall be for the period of one to three months.

**C.** Students may apply and be considered for more than one internship.

**D.** Internships shall be primarily conducted at the SRCA-OSH; however, other designated locations may be approved by the state records administrator and the state historian. Hours of the internship shall be set in consultation between the student intern and the state historian.

**E.** The conditions of an internship - including compensation, work to be performed and training to be provided - shall be explicitly stated in a written agreement between the intern and the SRCA. This agreement shall be endorsed by the state historian and approved by the state records administrator.

**F.** Requests to be released from an internship must be in writing and submitted to the state historian. Interns released from an agreement shall not be compensated for incomplete deliverables.

**G.** The SRCA shall terminate all agreements with students who are disenrolled from a college or university while completing a service learning internship.  
[1.13.8.9 NMAC - N, 6/30/08]

**1.13.8.10 APPLICATION FOR INTERNSHIP:**

**A.** An applicant for an internship shall complete the application process below.

**(1)** The applicant shall contact OSH in person or by telephone, e-mail or letter requesting an application package or shall download the application materials from the SRCA website.

**(2)** The applicant shall complete the application and submit it and all

required materials to the OSH by the deadlines established in the application package.

**B.** The applicant shall provide the following information as directed on the application form:

**(1)** personal and academic information;

**(2)** a statement, in the space provided, explaining the applicant's interest in the internship program and any areas of interest the applicant would like to pursue during the internship;

**(3)** the benefits the applicant would expect to realize through the internship and the benefits the applicant believes the state of New Mexico would realize; and

**(4)** a statement, in the space provided, of the length of the internship requested and the preferred dates.

**C.** The applicant shall include with the application form:

**(1)** an up-to-date résumé or curriculum vitae, which shall not exceed two pages and which shall also, in addition to academic and work experience, reflect the applicant's full name; and, if applicable, telephone numbers and e-mail addresses; and

**(2)** a letter of support from the student's academic advisor or department chair, which shall state that the applicant is in good academic standing.  
[1.13.8.10 NMAC - N, 6/30/08]

**1.13.8.11 FUNDING AND COMPENSATION:**

**A.** The New Mexico office of the state historian service learning student internship program is contingent on sufficient appropriations and operating budget.

**B.** All work (deliverables) conducted under a internship shall be completed by the end date of the internship period and, in all cases, no later than June 20 of the fiscal year in which the internship is awarded.

**C.** A successful applicant shall enter into an internship agreement issued by the SRCA which shall describe the specific duties, requirements, specific deliverables, timetables and compensation provisions.

**D.** All payments shall be subject to the successful completion of identified deliverables. The deliverables shall be delineated in the internship agreement.  
[1.13.8.11 NMAC - N, 6/30/08]

**1.13.8.12 REVIEW AND AWARD PROCESS:**

**A.** The staff of the OSH, a division of the SRCA, shall conduct an initial review of all applications to ensure that all required materials have been received



and that the applicant meets the minimum qualifications. Applicants who do not meet minimum qualifications or whose applications are incomplete shall be notified in writing; however, application packages shall not be returned.

**B.** Qualifying applications shall be reviewed and rated and internships awarded, after an interview of the prospective intern by the state historian, taking into consideration such factors as qualifications of the applicant, proposed internship activities, practicality of the internship, value and use of proposed internship in the advancement of an understanding and appreciation of New Mexico history, and budget availability.

**C.** During the review process, the state historian or his or her designee may request clarifying information from applicants.

[1.13.8.12 NMAC - N, 6/30/08]

**1.13.8.13 POST - AWARD REQUIREMENTS:** Successful internship applicants shall comply with the post-award requirements below.

**A.** Interns shall meet the conditions of the internship agreement.

**B.** Prior to the conclusion of the internship period, each intern shall be required to submit a report of the internship project(s) completed within two weeks of completing the internship. These requirements shall be further defined in the acceptance agreement.

[1.13.8.13 NMAC - N, 6/30/08]

**1.13.8.14 TIMETABLE - APPLICATIONS AND AWARDS:**

**A.** Completed applications may be submitted to OSH at any time.

**B.** The OSH shall conduct an initial review to determine if applications are complete and if applicants meet all requirements as set forth in 1.13.8 NMAC within ten working days of the receipt of applications.

**C.** Successful applicants shall be notified by OSH by e-mail or, if an applicant has no e-mail address, by telephone or by regular mail. An applicant shall satisfy the requirements of Subsections D and E of 1.13.8.14 NMAC prior to beginning internship and within the timeframes specified or the award may be rescinded.

**D.** Successful applicants shall notify the OSH of their acceptance or rejection of internship within five days of notification of award. Notification shall be made by e-mail, or if the applicant has no e-mail address, by telephone or regular mail. If notification is by telephone, written acceptance or rejection must be mailed, postmarked within two days of the telephonic notification.

**E.** Internship agreements shall be completed and signed prior to the beginning of the internship.

**F.** All work identified in the internship agreement shall be completed by the end of the internship period, but in all cases no later than June 20 of the fiscal year in which the internship is awarded.

[1.13.8.14 NMAC - N, 6/30/08]

**HISTORY OF 1.13.8 NMAC:**  
[RESERVED]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.4 NMAC, Section 11 effective 6/30/2008.

**1.13.4.11 RETENTION AND SCHEDULING REQUIREMENTS:**

E-messages may include public records or transitory information. Only those e-messages classified as public records must be retained based on established retention periods published in GRRDS, JRRDS, LRRDS and ERRDS (Title 1, Chapters 15 through 20 of the NMAC). E-messages must be categorized, filed and retained on the basis of content. The content of e-messages may vary considerably; therefore, each e-message shall be evaluated to determine if it meets the definition of a public record as defined in the Public Records Act and 1.13.4 NMAC. Non-records or transitory e-messages that do not provide evidence of official agency policies or business transactions may be deleted.

**A.** E-messages and attachments classified as public records shall be categorized under the appropriate record series identified in a GRRDS, JRRDS, LRRDS, or ERRDS. E-messages and attachments identified as public records shall be retained and stored for as long as required under the appropriate retention period. E-messages scheduled as permanent shall be transferred to the state archives. E-messages that are public records include but are not limited to:

- (1) policies and directives;
- (2) correspondence or memoranda that contain final directives, determinations, instructions or guidance regarding public business;
- (3) minutes of governing boards, advisory groups, ad-hoc committees or work groups developing programs;
- (4) messages that authorize, establish or complete a business transaction; or
- (5) final reports or recommendations such as to legislative committees or produced by task forces or study groups.

**B.** Non-record and transi-

tory e-messages do not set policy, provide directives, establish guidelines or procedures nor do they certify transactions; they may be destroyed without the prior approval of the state records administrator. Non-record and transitory e-messages include but are not limited to:

(1) duplicate copies of messages sent to multiple people;

(2) personal messages and announcements not related to official agency business;

(3) preliminary drafts of letters, reports and memoranda;

(4) messages considered brainstorming or preliminary thought processes in nature, reflecting the exchange of ideas preliminary to the development of a final decision or position of the agency;

(5) transmittal e-messages that do not add substantive information to the attachment(s) being transmitted;

(6) copies of documents distributed for convenience or reference;

(7) announcements of social events, such as retirement parties;

(8) spam (unsolicited, commercial e-messages); and

(9) messages to or from e-messages distributions lists (listserv) not directly related to agency business [~~and~~  
~~(10) instant messages~~].

[1.13.4.11 NMAC - N, 6/29/2007; A, 6/30/2008]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.6 NMAC, Sections 8, 11 and 13, effective June 30, 2008.

**1.13.6.8 ELIGIBILITY:**

**A.** To be eligible for a historical records scholarship, the applicant shall be employed by or volunteer for one of the following.

(1) A governmental organization including:

(a) state agencies as prescribed in the Public Records Act;

(b) public schools;

(c) district courts;

(d) public colleges and universities and all associated programs;

(e) county offices;

(f) municipal offices;

(g) quasi-governmental organizations; or

(h) Native American government organizations.

(2) A non-profit organization; verified as such by:

(a) a copy of its tax-exempt or 501(c)(3), or equivalent, status and

(b) evidence that it has made provisions for the transfer of their holdings to a like organization or an appropriate repository upon dissolution.

**B.** Previous scholarship recipients shall be in compliance with the stipulations of all previous awards in order to continue to be eligible.

**C.** Applicants receiving scholarships for out-of-state training shall not be eligible for out-of-state scholarships for three years from the date scholarship is awarded.

[1.13.6.8 NMAC - N, 06/30/04; A, 06/30/08]

### 1.13.6.11 APPLICATION FOR HISTORICAL RECORDS SCHOLARSHIPS:

**A.** A New Mexico historical records advisory board scholarship application shall be completed in its entirety.

**B.** The application shall contain the name of the applicant, a description of the [original, permanent or historical records] archives or records holdings of the sponsoring organization [how training will benefit the sponsoring organization or the records and demonstrate financial need for the scholarship] the name of the course title, date and location of the training.

**C.** The applicant shall provide a letter of support from the [management] director of the sponsoring organization.

**D.** The applicant shall provide a one-page letter stating [how the applicant and sponsoring organization will benefit from the requested training] how the training relates to the applicant's position; if the training will be used to teach staff or volunteers or to help another archivist or records manager; and whether the applicant has previously received scholarship funding from the New Mexico historical records advisory board, including the amount of the scholarship(s), the year in which funded, and the title(s) of the training attended.

**E.** The applicant shall provide a current resume, to include all training received in the last eighteen (18) months.

~~**F.** The applicant shall provide a statement of the organization's financial need for funding.~~

~~**G.** The applicant shall provide a statement noting past scholarship funding received from the New Mexico historical records advisory board, to include the total amount of the award and the name of the training session attended.~~

~~**H.** E.~~ A minimum match shall be required from the eligible entity and applicant of 20 percent of travel costs.

~~**I.** G.~~ **R e j e c t i o n :** Applications that do not comply with these

criteria shall be rejected.

[1.13.6.11 NMAC - N, 06/30/04; A, 06/29/07; A, 06/30/08]

[Obtain an application by calling (505) 476-7936, faxing a request to (505) 476-7893, or by e-mailing a request to nmhrab@state.nm.us. Refer to the NMHRAB web page at <http://www.nmcp.state.nm.us/nmhrab> for additional information about available resources.]

### 1.13.6.13 POST AWARD REQUIREMENTS:

~~**A.**~~ Submit proof of training, including:

~~**(1)**~~ **A.** a copy of a certificate issued upon completion of the training; and

~~**(2)**~~ **B.** all receipts for appropriate travel expenses (mileage, lodging, etc.).

~~**B.** Submit an article to the NMHRAB office for possible publication on agency's website.~~

[1.13.6.13 NMAC - N, 06/30/04; A, 06/29/07; A, 06/30/08]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.10 NMAC, Sections 7, 8, 9, 10, 11 and 16 effective 6/30/2008.

### 1.13.10.7 DEFINITIONS:

**A.** "Accession" means the act and procedures involved in a transfer of legal title and the taking of records or papers into the physical custody of an archival agency and the materials involved in such a transfer.

**B.** "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

**C.** "Agency" means any state agency, department, bureau, board, commission, institution or other organization of state government, the territorial government and the Spanish and Mexican governments in New Mexico ( Section 14-3-2 NMSA 1978).

**D.** "Custodial agency" means the agency responsible for the maintenance, care, or keeping of public records, regardless of whether the records are in that agency's actual physical custody and control.

**E.** "Electronic tracking system" means a warehouse management system designed to provide the state records center and archives with the tools necessary to efficiently manage the physical inventory and warehouse activities of the records centers.

**F.** "Human readable form" means information that can be recognized and interpreted without the use of technology.

**G.** "Inactive records" means the point during the life cycle of a record at which the record becomes inactive and thus can be transferred from the office of creation to the state records center for storage and subsequent disposition. ~~[Inactive records are seldom used in the day-to-day operations of an agency however they must be maintained for the duration of their lifecycle.]~~ Records are considered inactive when referred to less than once per year.

**H.** "ID" means a string of numerals, letters and characters that is used for identification.

**I.** "Life cycle" means the life span or time period from the creation or receipt of a record through its useful life to its final disposition. The five stages of the life cycle of a record include: creation; distribution and use; storage and maintenance; retention and disposition; and archival preservation for records of historical or information value.

**J.** "Master microfilm" means the original microform produced from which duplicates or intermediates can be obtained.

**K.** "Pick-up only personnel" means personnel authorized by a records custodian or record liaison officer only pick-up records from the state records center and archives (state records center).

**L.** "Public records" means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. (Section 14-3-2 NMSA 1978).

**M.** "Records" means information preserved by any technique in any medium now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

**N.** "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee.

**O.** "Records liaison officer" means a person in an agency responsible for authorizing the transfer, withdrawal or destruction of records and who acts on

behalf of the records custodian.

**P.** **“Retention”** means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes. Retention requirements are established in records retention and disposition schedules that are approved by the state commission of public records.

**Q.** **“Records retention and disposition schedules”** means rules adopted by the state commission of public records pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

[1.13.10.7 NMAC - Rp, 1 NMAC 3.2.10.1.7, 6/30/2005; A, 6/29/2007; A, 6/30/2008]

**1.13.10.8 CUSTODY OF RECORDS:** Agency records stored at the state records center and archives (state records center) shall remain in the custody of the records custodian of the custodial agency until such time as they are:

~~[A.]~~ ~~withdrawn permanently by the records custodian or the designated records liaison officer of the custodial agency;~~

**[B.]** ~~A.~~ destroyed with written approval from the state records administrator and the written consent of the records custodian or designated records liaison officer of the custodial agency and in accordance with retention periods established in records retention and disposition schedules; or

~~[C.]~~ **B.** transferred to the state records center and archives (archives) with the written approval of the state records administrator and the consent of the records custodian or a designated records liaison officer of the custodial agency.

[1.13.10.8 NMAC - Rp, 1 NMAC 3.2.10.1.8, 6/30/2005; A, 6/30/2008]

**1.13.10.9 RECORDS LIAISON OFFICER:**

**A.** A records liaison officer may be designated by a records custodian to handle the storage, withdrawal and access or transfer of agency records to the state records center and archives.

**B.** All records liaison officers shall attend the required basic records management training offered by the state records center and archives before they can store, withdraw or access records stored in the records center.

**C.** Records liaison officers shall be required to attend additional training when notified by the state records center and archives of changes to records management policies, procedures or regulations.

**D.** The records liaison officer shall be re-appointed annually by the record custodian, using a form approved by the state records administrator.

**E.** The form shall include but not limited to the following: name and signature of the records custodian (agency head or cabinet secretary); name and signature of the records liaison officer; division or bureau (if acceptable); agency code; agency name and mailing address; fiscal year of designation; phone number; fax number and e-mail address.

**F.** If a records liaison officer leaves the employment of an agency or is released from records management duties, the agency shall immediately notify the state records center and archives (agency analysis bureau) regarding the change, and the records custodian shall appoint a new records liaison officer.

**G.** An agency must have an approved records liaison officer on file with the state records center and archives as specified in Subsection A of 1.13.10.9 NMAC in order to store, withdraw or access records stored in the records centers.

[1.13.10.9 NMAC - Rp, 1 NMAC 3.2.10.1.9, 6/30/2005; A, 6/30/2008]

**1.13.10.10 [PICK UP — ONLY PERSONNEL] TRANSFER AND PICK-UP:**

**A.** Only inactive records shall be accepted for transfer and storage at the records center. Records are considered inactive when an agency refers to an individual box less than once a year.

**B.** The records center requires the use of records storage boxes, 15” x 12” x 10” in size for both letter and legal size paper files. An agency submitting boxes for storage containing paper records shall:

(1) place only one type of record series with the same disposition date in each box;

(2) place the records in the box vertically and in the same order that they were kept in the office;

(3) place letter-sized folders across the 12-inch side, facing the front of the box;

(4) place legal-sized folders across the 15 inch side, starting from left to right;

(5) leave at least one inch of space for ease of access;

(6) place the lid on the box without tape;

(7) place all documents (with the exception of oversize materials) in accurately labeled standard file folders; and

(8) not place hanging file folders in the boxes.

**C.** Boxes that are damaged or overfilled shall be rejected for storage

and returned to the custodial agency.

**D.** Blueprints and maps submitted for storage shall be placed in boxes designed for that purpose before they are transferred.

~~[A.]~~ **E.** ~~[Pick up only personnel may be designated by]~~ A records custodian or a records liaison officer may designate personnel to pick up agency records from the records center.

~~[B.]~~ **F.** Pick-up personnel shall be appointed annually, using a form approved by the state records administrator. The form shall include but not be limited to the following: name and signature of the records custodian (agency head or cabinet secretary); name and signature of the records liaison officer; pick-up personnel’s name and signature; section/unit; agency code; agency name and mailing address; fiscal year of designation; phone number; fax number and e-mail address.

~~[C.]~~ **G.** If a pick-up only designee leaves the employment of an agency or is released from the duty of picking up records, the agency shall immediately notify the state records center and archives (agency analysis bureau) regarding the change.

[1.13.10.10 NMAC - Rp, 1 NMAC 3.2.10.1.11, 6/30/2005; A, 6/30/2008]

**1.13.10.11 [WITHDRAWAL OF AND] ACCESS TO AND WITHDRAWAL OF RECORDS IN CUSTODY OF THE CUSTODIAL AGENCY:**

~~[A.]~~ ~~Withdrawal of and access to agency records stored at the state records center and archives (records center) shall be authorized in writing by the records custodian or the designated records liaison officer of the custodial agency and submitted to the records center.~~

**B.** ~~Requests by the public to access agency records stored at the state records center shall be made to the records custodian or the records liaison officer of the custodial agency. Access shall be authorized in writing by the records custodian or the records liaison officer of the custodial agency.~~

~~C.~~ ~~Requests to review records on site at the state records center and archives (state records center) by the custodial agency shall be authorized by the records custodian or the records liaison officer.~~

~~D.~~ ~~The custodial agency may permanently withdraw records stored at the state records center.~~

~~E.~~ ~~Record custodian or records liaison officers shall temporarily withdraw the records of the custodial agency from storage by making a request in writing and signing a withdrawal form. The form shall include but not limited to the following: name and signature of the records~~

~~liaison officer; date and time of transaction; agency name; agency address; records liaison officer's phone number; date requested; destination; box number; shipment box number; barcode; location; folder number; record series item number; description; and return date.~~

~~F. Requests to access agency records made under the Inspection of Public Records Act shall be referred by the state records administrator to the custodial agency.]~~

A. Access to records stored in the records center shall be authorized in writing by the records custodian or the designated records liaison officer. The authorization shall be submitted to the records center and must specify the name of the individual(s) authorized to access the records and the effective period of the authorization.

B. Requests by the public to access records stored at the state records center shall be directed to the records custodian or the records liaison officer of the custodial agency.

C. Requests to review records on-site at the records center by the custodial agency shall be authorized by the records custodian or the records liaison officer. Personal identification must be provided to the records center staff.

D. Requests to access agency records made under the Inspection of Public Records Act shall be referred by the state records administrator to the custodial agency.

E. Requests for temporary or permanent withdrawal of records stored in the records center shall be made by the records liaison officer. The records liaison officer shall complete and submit a withdrawal form. The form shall include but not be limited to the following: name and signature of the records liaison officer; date and time of transaction; agency name; agency address; records liaison officer's phone number; date requested; destination; box number; shipment box number; barcode; location; record series item number; description; and return date.

F. Requests for withdrawals shall be at the box level. The records center will not honor requests for withdrawal of records at the folder level.

G. Requests to withdraw between one to 10 boxes shall be processed by the records center within 24 hours. Requests to withdraw 10 or more boxes shall be evaluated by the records center bureau chief and processed based on the work load of the record center staff.

[1.13.10.11 NMAC - Rp, 1 NMAC 3.2.10.1.12, 6/30/2005; A, 6/30/2008]

**1.13.10.16 STORAGE OF**

#### **MICROFILM:**

A. An agency shall have an approved microphotography plan on file with the state records center and archives (electronic records and micrographic bureau) before master microfilm can be stored. For information on microphotography systems and standards see 1.14.2 NMAC.

B. The microphotography plan shall specify that the master microfilm will be stored at the state records center and archives (electronic records and micrographics bureau).

C. Agency's records liaison officers or microfilm vendors approved by an agency to transfer microfilm to the state records center shall complete a microfilm storage transmittal form and submit it manually (hardcopy) to the agency analysis bureau for approval before records can be stored. The form shall contain but is not limited to the following: agency code; agency name; division name; date prepared; page number; office location; name and signature of the records liaison officer; records liaison officer telephone number; records liaison officer fax number; record series number; record series title; date filmed; begin date; end date; disposition date; roll number; begin document; end document and media type.

~~[C.]~~ D. Microfilm shall pass inspection before it is approved for storage. Information on microfilm that has passed inspection will be entered into a computer tracking system by the electronic records and micrographics bureau staff. The computer system assigns permanent container numbers.

~~[D.]~~ E. Microfilm [inspection sheets] storage transmittal forms shall be returned to the custodial agency with a notation indicating the assigned permanent container numbers.

~~[E.]~~ F. It is the responsibility of the custodial agency to notify the microfilm vendor under contract that the microfilm has passed inspection.

~~[F.]~~ G. After the microfilm has passed inspection and has been approved for storage the custodial agency shall submit a request for disposition form to the state records center and archives (agency analysis bureau) requesting authorization to dispose of the source documents.

~~[G.]~~ H. If the microfilm has failed inspection, the electronic records and micrographics bureau staff shall notify the agency by letter that the microfilm can not be stored and that source documents shall be re-filmed before they can be destroyed.

~~[H.]~~ I. For the procedure on withdrawal and access of records stored at the electronic records and micrographics bureau, see 1.13.10.11 NMAC.

~~[I.]~~ J. The records custodian and records liaison officer shall be notified by the records center when records in storage have met the legal retention period and are eligible to be transferred to archives or are eligible for destruction.

~~[J.]~~ K. If an agency does not respond to the records center's notice of records eligible for destruction by the established deadline, the state records center and archives will charge the custodial agency a storage fee as established in 1.13.2 NMAC, Fees.

[1.13.10.16 NMAC - N, 6/30/2005; A, 6/30/2008]

### **NEW MEXICO PUBLIC REGULATION COMMISSION**

This is an amendment to 13.14.3 NMAC, Section 11, effective July 1, 2008.

#### **13.14.3.11 PREMIUM DIVISION WITH AGENTS — OTHER FEES AND EXPENSES:**

A. On or after May 1, 2000, all agency contracts, agency agreements and other contracts between licensed New Mexico title insurance agents and insurers admitted to write title insurance in New Mexico shall provide that agents shall retain the following amounts of all gross premiums on commitments, binders, policies and endorsements issued on or after April 1, 1995, and shall remit to the insurer the remainder of all such gross premiums:

(1) for amounts of insurance up to two million dollars (\$2,000,000), agents shall retain [eighty four and two tenths percent (84.2%)] eighty percent (80%);

(2) for additional amounts of insurance over two million dollars (\$2,000,000) and up to five million dollars (\$5,000,000), agents shall retain seventy-five percent (75%);

(3) for additional amounts of insurance over five million dollars (\$5,000,000) and up to ten million dollars (\$10,000,000), agents shall retain seventy percent (70%);

(4) for additional amounts of insurance over ten million dollars (\$10,000,000) and up to twenty-five million dollars (\$25,000,000), agents shall retain sixty-five percent (65%);

(5) for additional amounts of insurance over twenty-five million dollars (\$25,000,000) and up to fifty million dollars (\$50,000,000), agents shall retain sixty percent (60%); and

(6) for additional amounts of insurance over fifty million dollars (\$50,000,000), agents shall retain fifty percent (50%).

**B.** In addition, agents shall retain no part of the additional twenty-five cents (\$0.25) per one thousand dollars (\$1,000) collected on policy amounts in excess of ten million dollars (\$10,000,000) as provided for in 13.14.9.18 NMAC.

**C.** This premium division shall not apply to replacement policies in the case of insolvent insurers issued pursuant to 13.14.6.22 NMAC, 13.14.7.20 NMAC, and 13.14.9.26 NMAC. Agents shall retain forty-two and one-half percent (42.5%) of the gross premium collected for such replacement policies and shall remit to the insurer the remainder of said gross premium. These premium divisions shall remain in effect until altered by the superintendent who shall review the same annually at the title insurance hearing held in November of each year or as otherwise specifically provided by these regulations. Fees, which are not premium, such as inspection fees, cancellation fees, escrow fees, and other charges (whether mentioned in these regulations or not) are not subject to division between agent and insurer. No agent or insurer shall pay or receive any consideration for title insurance business (or referral of business) other than that division of premiums set forth herein. No agent shall be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall, as of April 1, 1995, be void and unenforceable. Insurers shall not reward or otherwise compensate agents (or vice versa) directly or indirectly for business other than as herein provided.

**D.** Title insurers may pay on behalf of, or reimburse their agents for expenses associated with any instruction, lectures or seminars conducted by that title insurer for its agents, if such instruction, lectures or seminars have been approved in advance by the department of insurance for continuing education credit under NMSA 1978 Section 59A-12-26. An insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by the title insurer to all of its agents on a non-discriminatory basis. [6-16-86...4-3-95; 13.14.3.11 NMAC - Rn, 13 NMAC 14.4.11 & A, 5-15-00; A, 7-1-05; A, 9-1-07; A, 7-1-08]

**NEW MEXICO PUBLIC REGULATION COMMISSION**

This is an amendment to 13.14.9 NMAC, Section 18, effective July 1, 2008.

**13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER’S POLICIES:** The following schedule of premium rates for original owner’s policies shall be in effect from ~~[September 1, 2007]~~ July 1, 2008 until modified by the superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	<del>[164]</del> <u>170</u>	24,000	<del>[269]</del> <u>279</u>	38,000	<del>[361]</del> <u>374</u>
11,000	<del>[171]</del> <u>177</u>	25,000	<del>[275]</del> <u>285</u>	39,000	<del>[366]</del> <u>380</u>
12,000	<del>[179]</del> <u>186</u>	26,000	<del>[283]</del> <u>293</u>	40,000	<del>[373]</del> <u>387</u>
13,000	<del>[187]</del> <u>194</u>	27,000	<del>[289]</del> <u>300</u>	41,000	<del>[379]</del> <u>392</u>
14,000	<del>[195]</del> <u>202</u>	28,000	<del>[297]</del> <u>308</u>	42,000	<del>[385]</del> <u>399</u>
15,000	<del>[203]</del> <u>210</u>	29,000	<del>[304]</del> <u>315</u>	43,000	<del>[392]</del> <u>406</u>
16,000	<del>[211]</del> <u>219</u>	30,000	<del>[311]</del> <u>322</u>	44,000	<del>[397]</del> <u>412</u>
17,000	<del>[219]</del> <u>227</u>	31,000	<del>[318]</del> <u>330</u>	45,000	<del>[404]</del> <u>418</u>
18,000	<del>[227]</del> <u>235</u>	32,000	<del>[324]</del> <u>335</u>	46,000	<del>[409]</del> <u>424</u>
19,000	<del>[233]</del> <u>242</u>	33,000	<del>[330]</del> <u>342</u>	47,000	<del>[416]</del> <u>431</u>
20,000	<del>[241]</del> <u>250</u>	34,000	<del>[336]</del> <u>348</u>	48,000	<del>[422]</del> <u>438</u>
21,000	<del>[247]</del> <u>256</u>	35,000	<del>[342]</del> <u>355</u>	49,000	<del>[428]</del> <u>443</u>
22,000	<del>[255]</del> <u>264</u>	36,000	<del>[349]</del> <u>362</u>	50,000	<del>[434]</del> <u>450</u>
23,000	<del>[261]</del> <u>271</u>	37,000	<del>[354]</del> <u>367</u>		

[Continued on page 537]

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$ <del>[5.28]</del> <u>5.48</u>	<del>[84.2]</del> <u>80%</u>		\$ <del>[5.28]</del> <u>5.48</u>
over \$100 to \$500	\$ <del>[4.16]</del> <u>4.31</u>	<del>[84.2]</del> <u>80%</u>		\$ <del>[4.16]</del> <u>4.31</u>
over \$500 to \$2,000	\$ <del>[3.26]</del> <u>3.38</u>	<del>[84.2]</del> <u>80%</u>		\$ <del>[3.26]</del> <u>3.38</u>
over \$2,000 to \$5,000	\$ <del>[2.62]</del> <u>2.72</u>	75%		\$ <del>[2.62]</del> <u>2.72</u>
over \$5,000 to \$10,000	\$ <del>[2.18]</del> <u>2.26</u>	70%		\$ <del>[2.18]</del> <u>2.26</u>
Over \$10,000 to \$25,000	\$ <del>[1.87]</del> <u>1.94</u>	65%	\$ 0.25	\$ <del>[2.12]</del> <u>2.19</u>
over \$25,000 to \$50,000	\$ <del>[1.63]</del> <u>1.69</u>	60%	\$ 0.25	\$ <del>[1.88]</del> <u>1.94</u>
over \$50,000	\$ <del>[1.30]</del> <u>1.35</u>	50%	\$ 0.25	\$ <del>[1.55]</del> <u>1.60</u>

[6-16-86...4-3-95; A, 5-1-99; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5-15-00; A, 5-31-00; A, 8-1-00; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 9-1-07; A, 7-1-08]

**NEW MEXICO PUBLIC REGULATION COMMISSION**

This is an amendment to 17.9.572 NMAC, Section 11, effective 06-30-08.

**17.9.572.11 REASONABLE COST THRESHOLD:**

A. A public utility shall not be required to add renewable energy to its electric energy supply portfolio, pursuant to the renewable portfolio standard, above the reasonable cost threshold established by the commission.

B. The reasonable cost threshold for 2006 is one percent of all customers' aggregated overall annual electric charges, increasing by one-fifth percent per year until January 1, 2011, at which time it will be two percent. The reasonable cost threshold shall then be increased by 0.25 percent per year until January 1, 2015, at which time it will be three percent. As changing circumstances warrant, and after notice and hearing, the commission may prospectively modify the reasonable cost threshold applicable to new contracts, but not the threshold applicable to existing contracts which have been previously approved by the commission as part of a procurement plan to meet a public utility's renewable portfolio standard. In modifying the reasonable cost threshold, the commission will take into account:

- (1) the price of renewable energy at the point of sale to the public utility;
- (2) transmission and interconnection costs required for the delivery of renewable energy to retail customers;
- (3) the impact of the cost for renewable energy on retail customer rates;
- (4) overall diversity, reliability,

availability, dispatch flexibility, cost per kilowatt-hour and life cycle cost on a net present value basis of renewable energy resources available from suppliers; and

(5) other factors, including public benefits, the commission deems relevant.

~~[C. The commission may establish reasonable cost thresholds for individual renewable energy technologies.]~~

~~[D.]~~ C. In any given year, if the cost to procure renewable energy is greater than the reasonable cost threshold, a public utility will not be required to incur that cost or to procure that resource, provided that the condition excusing performance under the renewable portfolio standard in any given year will not operate to delay the annual increases in the renewable portfolio standard in subsequent years. A public utility that believes its procurement will exceed the reasonable cost threshold shall file with the commission a request for waiver of the renewable portfolio standard for the applicable calendar year. The request shall explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold and shall include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the reasonable cost threshold. Waiver requests shall be deemed granted if not acted upon within sixty (60) days.

[17.9.572.11 NMAC - Rp, 17.9.572.11 NMAC, 8-30-07; A, 6-30-08]

**NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS**

This is an amendment to 11.1.4 NMAC, Sections 1, 3, 7 and 10 through 15, effective 06/30/2008. This rule was also reformatted

and renumbered from 11 NMAC 1.4 to comply with current NMAC requirements.

**11.1.4.1 ISSUING AGENCY:**

~~[Labor and Industrial Division, New Mexico Department of Labor (NMDOL); Labor Relations Division, New Mexico Department of Workforce Solutions (NMDWS).~~

[8/15/98; 11.1.4.1 NMAC - Rn & A, 11 NMAC 1.4.1, 06/30/08]

**11.1.4.3 STATUTORY AUTHORITY:**

Section 50-1-3 NMSA directs the director of the ~~[labor and industrial division, NMDOL]~~ labor relations division, NMDWS to foster, promote and develop the welfare of wage earners, advance opportunities for profitable employment; require, acquire and disseminate useful information on all subject (s) connected with labor. Article 6, Section 50-6-1-16 NMSA sets guidelines for the welfare of children.

[8/15/98; 11.1.4.3 NMAC - Rn & A 11 NMAC 1.4.3, 06/30/08]

**11.1.4.7 DEFINITIONS:**

A. "Employ" includes 'suffer' or permit to work.

B. "Employee" is a person whose work is controlled by employer as to how and when to perform the task.

C. "Exempt" means an employee who is exempt from minimum wage or overtime provisions. In order for an employee to be exempt under the executive category, the worker must meet all of the following requirements:

- (1) primary duty - perform non manual work related to management of business;
- (2) exercise discretion;
- (3) regularly assist executive, or

perform specialized work, special assignments;

(4) perform less than 20 percent nonexempt work.

D. Hazardous occupation is defined as any occupation determined to be hazardous by the United States Fair Labor Standards Act.

E. "Independent contractor" is a person who works free from the control of the employer as defined by the internal revenue service.

F. "Overtime" means hours worked after 40 hours in a seven-day work week. Overtime will be computed at time and a half of the employee's regular rate of pay.

G. Pay periods are the days between pay days.

H. Pay days are designated days on which employees will be paid. Pay days cannot be more than sixteen (16) days apart, except for professional, administrative or executive employees or employees employed in the capacity of outside salesman, as those terms are defined under the Federal Fair Labor Standards Act. (FLSA).

I. "Travel time" means time spent by an employee in travel as part of his principal activity, such as travel from job site to job site, which must be counted as hours worked.

J. "Wage claim" is a document signed by an employee, giving the labor and industrial division authority to investigate a complaint of unpaid wages.

K. "Work permit" is a permit to allow a child under the age of 16 to be able to work under certain conditions and issued by a designated school official or an agent of the labor and industrial division.

L. "Wages" means all amounts at which the labor or service rendered is paid, whether the amount is fixed or on a time, task, piece, commission basis.

M. "Written authorization," means a document an employee signs at the time of hiring, giving the employer permission to deduct certain items from his pay. A written authorization is not needed for an employer to deduct an advance or over-payment of wages; however the employer must pay at least minimum wage times the hours worked to the employee.

N. "Entertainment industry" means an employer including but not limited to any organization, or individual using the services of any minor in: motion pictures of any type, using any format including theatrical film, commercial, documentary, and television program, or similar format by any medium including but not limited to photography; recording; modeling; theatrical productions; publicity; and any performances where minors perform or entertain.

O. "Legal guardian"

means a person appointed as a guardian by a court or Indian tribal authority.

P. "Certified teacher" means any person with a valid and current New Mexico teaching certificate issued by the New Mexico public education department or its equivalent in the United States.

Q. "Place of employment", "work location", "movie set", "set", and "location" means the actual work site where any person provides services in New Mexico as a performer, paid or non-paid.

R. "Minor" means any person under the age of 18 years who is required to attend school under the provisions of the public education department, and includes minors under the age of six.

S. "Safety" means the condition of being protected from any situation that is detrimental to the child's health and well being.

T. "Child performer" means a minor person employed to act or otherwise participate in the performing arts, including but not limited to motion pictures, theatrical, radio or television products. [8/15/98; 11.1.4.7 NMAC - Rn & A, 11 NMAC 1.4.7, 06/30/08]

#### **11.1.4.10 EMPLOYMENT OF CHILDREN IN THE ENTERTAINMENT INDUSTRY:**

A. Any person who employs a person under the age of 18 as an actor or performer in the entertainment industry must obtain a pre-authorization certificate issued by the department of workforce solutions prior to the start of work. The pre-authorization certificate will include: the project name, estimated dates and length of the project, employer name, employer New Mexico address, a minimum of three contact personnel including name, address, and contact telephone numbers. The pre-authorization certificate will include: the child performer's information: name, address, date of birth, where the child is registered to attend to school, grade level of the child, special educational needs, anticipated length of employment on this project, nature of work on this project, and list any possible exposure to potentially hazardous materials or substances. A signature will be required from the child performer when the child is 14 years of age and older. A signature will be required from the parent or legal guardian giving the child permission to be employed in the entertainment industry. A signature will be required from the employer certifying compliance with all requirements of the pre-authorization certificate.

B. It is the responsibility of the employer to obtain a child performer pre-authorization certificate before the employment begins. The employer must be able to provide a copy at the work site when

requested to do so. The department of workforce solutions will retain a copy.

C. The child performer pre-authorization certificate is valid for one year from the date it was issued or until the specific project for which the child is employed by the employer who makes the application for the pre-authorization ceases, whichever time period is shorter.

D. The parent or legal guardian of the child performer can contact the department of workforce solutions to renew the permit 30 days prior to expiration.

E. A pre-authorization certificate for a child performer can only be issued by the department of workforce solutions.

F. No pre-authorization certificate will be given or issued without a signature of a parent or legal guardian indicating their permission for their child to work on the specific project. A parent or legal guardian must be within eyesight and earshot of the child performer at all times other than the time periods in which teachers are teaching school.

G. The employer must provide a certification of compliance for the certified teacher with appropriate teaching credentials for grade levels kindergarten through 12 or to teach the level of education required for the child performer at the place of employment to the department of workforce solutions prior to issuance of the pre-authorization certificate.

H. It is the responsibility of the employer to provide a New Mexico certified trainer or technician accredited in a United States department of labor occupational safety and health administered-certified safety program at the place of employment at all times when a child performer may be exposed to potentially hazardous conditions. Hazardous conditions are special effects, which potentially could be physically dangerous to the child performer.

I. The employer must provide a written background check on all certified teachers, and certified trainers and technicians on the movie set to the department of workforce solutions. It is the responsibility of the employer, parent, legal guardian, teacher, trainer and technician to report any arrest or conviction record and any other information that may present a possible danger to the health, safety and well being of the child performer.

[11.1.4.10 NMAC - N, 06/30/08]

#### **11.1.4.11 CERTIFICATE AND DUTIES OF CERTIFIED TEACHERS:**

A. A certified teacher of New Mexico resident children, who attend public schools, must possess a valid and current teaching certificate issued by the New Mexico public education department.

Certified teachers of non-resident students must possess a valid and current teaching certificate from one of the United States to teach grade levels kindergarten through 12 or teach the level of education required for the child performer at the place of employment.

B. All certified teachers, shall, in addition to teaching, and in conjunction with the parent or legal guardian, also have the responsibility of monitoring and protecting the health, safety and well being of the child performers they have been hired to teach during the time the teacher is required to be present.

C. The certified teacher, parent, or legal guardian may refuse to allow the engagement of the child performer at the place of employment. Any party may report conditions threatening the health, safety, and well being of the child performer to the department of workforce solutions. It is the ultimate responsibility of the parent or legal guardian to assure that the safety, health and well being of the child are being protected. A teacher must be present during the time reserved for school, except that the child performers under 16 do not require the presence of a teacher for up to one hour for wardrobe, make-up, hair-dressing, promotional publicity, personal appearances, or audio recording if these activities are not the actual site of filming or at the theatre or if school is not in session, and if the parent or legal guardian is present within earshot or eyesight of the child performer.

[11.1.4.11 NMAC - N, 06/30/08]

#### **11.1.4.12 LIMITATIONS OF CHILD PERFORMERS WORKING HOURS INCLUDING SCHOOL TIME:**

A. All child performers' ages six to 18 years must be provided with a teacher for each group of 10 or fewer child performers when school is in session.

B. No child performers shall begin work before 5:00 a.m. or continue work after 10:00 p.m., on evenings preceding school days. Child performers shall not work later than 12:00a.m. on days preceding non-school days. The time the child performer can be permitted at the place of employment may be extended by one-half hour for a meal period.

C. No infants 15 days old to six months of age may be employed as a child performer unless a United States licensed physician who is board-certified in pediatrics provides a written certification that the infant is at least 15 days old and, is physically capable of handling the stress of filmmaking. With the physician's approval the infant performer may be at the place of employment a maximum of two hours, with no more than 20 minutes of work time.

Work time for infants shall be limited to one period of two consecutive hours in any one day.

D. Child performers ages seven months to two years may be at the place of employment for up to four hours and may work up to two hours. The remaining time must be reserved for the child performers rest and recreation.

E. Child performers ages three years to five years may be at the place of employment for up to six hours and may work up to three hours. The remaining time must be reserved for the child performer's rest and recreation.

F. When school is in session, child performers ages six years to eight years may be at the place of employment for up to eight hours, the sum of four hours work, three hours schooling, and one hour of rest and recreation. When school is not in session, work time may be increased up to six hours, with the remaining time reserved for the child performer's rest and recreation.

G. When school is in session, child performer ages nine to 15 years may be at the place of employment for up to nine hours, the sum of five hours work, three hours schooling, and one hour rest and recreation. When school is not in session, work time may be increased up to seven hours, with the remaining time reserved for the child performer's rest and recreation.

H. When school is in session, child performers age 16 to 18 years may be at the place of employment for up to 10 hours, the sum of six hours work, three hours schooling and one hour of rest and recreation. When school is not in session, work time may be up to eight hours, with the remaining time reserved for the child performer's rest and recreation.

I. In exceptional circumstances due to unusual performance requirements, a waiver of the mandatory hours and start to finish times may be granted by the department of workforce solutions. Such waiver must be granted prior to the performances of the work that is the subject of the waiver. The department of workforce solutions will grant a waiver only under the following circumstances:

(1) written notification through a listing of specific dates and times that the child performers will be employed or present at the place of employment;

(2) written acknowledgement that the child performer's parent or legal guardian have been fully informed of the circumstances and have granted advance consent.

J. The child performer must be provided with a 12-hour rest break at the end of the workday.

K. All time spent in travel-

ing from a studio to a location or from a location to a studio shall count as part of the working day for a minor. When a minor with a company on a location which is sufficiently distant to require an overnight stay and is required to travel daily between living quarters and the place where the company is actually working, the time spent by the minor in such traveling will not count as work time, provided the company does not spend more than 45 minutes traveling each way and furnishes the necessary transportation.

[11.1.4.12 NMAC - N, 06/30/08]

#### **11.1.4.13 REQUIREMENT OF TRUST ACCOUNT FOR ALL CHILD PERFORMERS:**

A. Each time a child performer is employed in the state of New Mexico with a contract equal or greater than one thousand dollars (\$1000), a trust account will be created for the child performer.

B. It is the responsibility of the parent or legal guardian, or trustee to set up a trust account for the child performer in the child's state of residence for the sole benefit of the child within seven business days after the child performer's employment contract is signed. The child will not have access to the trust account until the child is 18 years of age or becomes legally emancipated.

C. The parent, guardian, or trustee shall provide the employer with a trustee statement within 15 days after the start of employment. Once the employer receives the trustee statement, the employer will provide the parent, guardian, or trustee with a written acknowledgement of receipt.

D. If the employer does not receive the trustee statement within 90 days after the start of employment, the child's employer shall refer the matter to district court. The district court shall have continuing jurisdiction over the trust.

E. The employer shall deposit not less than 15 percent of the child's gross earnings directly into the child trust account within 15 business days of the work performance. If the account is not established, the employer shall withhold 15 percent of the gross income until a trust account is established or until court orders otherwise. Once the employer deposits 15 percent of the gross earnings in the trust account, the employer shall have no further obligation to monitor the funds.

F. Once the funds are deposited in the trust account, only the trustee shall be obligated to monitor and account for the funds.

[11.1.4.13 NMAC - N, 06/30/08]

#### **11.1.4.14 SAFETY REQUIRE-**



**MENTS FOR CHILD PERFORMERS:**

A. No dressing room is to be occupied simultaneously by a minor and an adult performer or by minors of the opposite sex.

B. It is the responsibility of the employer to provide a safe, secure shelter for child performers under the age of 18 to rest when required to be at the place of employment during non-performances times.

C. No employer may cause, induce, entice, or permit a child performer to engage or to be used sexually exploitive material for the purpose of producing a performance. No child performer may be depicted in any media as appearing to participate in a sex act.

[11.1.4.14 NMAC - N, 06/30/08]

**11.1.4.15 PENALTIES AND DETERMINATION PROCESS:**

A. The director of the labor relations division may for cause refuse to issue a pre-authorization certificate to any project that has violated the provision of this act within a two-year period.

B. The director of labor relations division will notify the employer within 10 days from the dates requested of a non-issuance of a pre-authorization certificate.

C. Any affected party may request a reconsideration of the director's actions, in writing, within 10 days.

D. The director of labor relations division may schedule an administrative hearing when, in their judgment, it would facilitate resolution of the complaint. The conduct of the hearing is not governed by the Administrative Procedures Act, but rather by procedures established by the labor and industrial bureau. (50-1-2)

E. The director of the labor relations division may issue a subpoena duces tecum to compel the production of records they believe are necessary for the resolution of the complaint.

F. The director of the labor relations division may issue written findings whenever they have sufficient evidence upon which to base their determination.

G. Other penalties for violations may be assessed pursuant to Section 50-6-12 NMSA 1978 Compilation.

[11.1.4.15 NMAC - N, 06/30/08]

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**End of Adopted Rules Section**

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**Other Material Related to Administrative Law**

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**NEW MEXICO  
DEPARTMENT OF  
AGRICULTURE**

Public Meeting Notice

A meeting of the Acequia and Community Ditch Fund Committee will be held to determine distribution of the 2008 Acequia and Community Ditch Fund. The meeting will be held on Tuesday, July 15, 2008, at 1:30 p.m. in Santa Fe, New Mexico, Room 326, State Capitol Building.

Copies of the agenda may be obtained by contacting the New Mexico Department of Agriculture, at (505) 646-1091, or by writing New Mexico Department of Agriculture, Agricultural Programs and Resources, MSC-APR, P O Box 30005, Las Cruces, New Mexico 88003-8005.

NOTICE TO PERSONS WITH DISABILITIES: If you have a disability and require special assistance to participate in this meeting, please contact the New Mexico Department of Agriculture at least three (3) days prior to the meeting, at (505) 646-1091. Disabled persons who need documents such as agendas or minutes in accessible form should contact the New Mexico Department of Agriculture.

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**End of Other Related  
Material 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
Issue Number 2	January 16	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 29
Issue Number 5	March 3	March 14
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 16
Issue Number 12	June 17	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 14
Issue Number 16	August 15	August 29
Issue Number 17	September 2	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	October 31	November 14
Issue Number 22	November 17	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 31

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.