

**NEW  
MEXICO  
REGISTER**

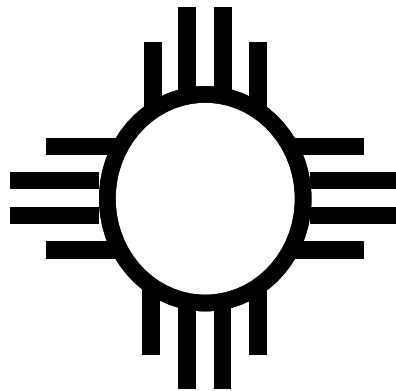


**Volume XIX  
Issue Number 17  
September 15, 2008**



# **New Mexico Register**

**Volume XIX, Issue Number 17**  
**September 15, 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 17

September 15, 2008

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

### NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

### PROTECTIVE SERVICES DIVISION

#### NOTICE OF PUBLIC HEARING

Protective Services (PS) of the Children, Youth and Families Department (CYFD) will hold a public hearing in Santa Fe on Wednesday, September 24, 2008 from 9:30 to 11:00 a.m. in the PERA Building, 1120 Paseo de Peralta, PS conference room, # 227, to take comments regarding the revised NMAC 8.10.6, In-Home Services (IHS) Policy.

The PERA building is accessible to people with disabilities. Documents can be available in different formats to accommodate a particular disability upon request by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation. Written comments are provided the same weight as comments received during the public hearings.

The policy may also be reviewed between 8:00 a.m.-5:00 p.m. at the PS Director's office, Room 254, in the PERA building in Santa Fe. Copies of the report may be purchased (for the cost of copying); contact Milissa Starkovich, Policy and Procedure Coordinator, CYFD-PS, at 505-827-8078.

### NEW MEXICO GAME COMMISSION

#### STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, October 2, 2008, beginning at 9:00 a.m., at the Sgt. Willie Estrada Memorial Civic Center - Main Auditorium, 800 E. First St., Alamogordo, NM 88310, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Revocations; International and Tribal Requests for Pronghorn Antelope from New Mexico; General Public Comments (limited to 3 minutes); Prospective 2009 Legislative Initiatives Update; Adoption of Policy on Notification of Commission Members for Chairman/Director Concurrence Actions;

and Closed Executive Session.

The following rules will be opened for public comment and consideration for adoption by the Commission:

- \* Biennial Review of New Mexico State-listed Wildlife (19.33.6.8, NMAC);
- \* Adoption of Amendments to the Deer Rule, 19.31.13, NMAC, the Bighorn Sheep Rule, 19.31.17, NMAC, and the Turkey Rule, 19.31.16, NMAC;
- \* Adoption of Amendments to the Elk Rule, 19.31.14, NMAC;
- \* Adoption of the Amendments to the Bear and Cougar Rule, 19.31.11, NMAC;
- \* Adoption of Amendments to the Barbary Sheep, Oryx, and Persian Ibex Rule, 19.31.12, NMAC;
- \* Adoption of a New Rule Titled the Antelope Private Land Use System Rule (A-PLUS), 19.30.12, NMAC;
- \* Adoption of Amendments to the Pronghorn Antelope and Javelina Rule, 19.31.15, NMAC;
- \* Adoption of Amendments to the Hunting and Fishing-Manner and Method of Taking Rule, 19.31.10, NMAC, the Boundary Descriptions for Wildlife Management Areas Rule, 19.30.4, NMAC, and the Hunting and Fishing License Application Rule, 19.31.3, NMAC; and
- \* Adoption of Amendments to the Depredation Assistance Rule, 19.30.2, NMAC.

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Shirley Baker at (505) 476-8029. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

### NEW MEXICO HEALTH POLICY COMMISSION

#### NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED RULE CHANGE OF THE DATA REPORTING REQUIREMENTS FOR HEALTH CARE FACILITIES REGULATIONS 7.1.4 NMAC

The New Mexico Health Policy Commission (HPC) will hold a public hearing on October 14, 2008 at 9:00am, and continuing thereafter as necessary. The hearing will be held at the Health Policy Commission conference room, 2055 S. Pacheco, Santa Fe, New Mexico 87505. The conference room is located in Suite 300.

The proposed amendments relate to several specific areas, including: 1) Reporting schedule - now yearly submission; 2) Financial Statements - annual unaudited individual facility statements are required; 3) E-Code - now required with diagnosis in a range of ICD-9-CM 800-999; 4) Complete address of patient - now includes city, county, and state as well as street address and zip code; 5) Medicaid - exclusions now deleted, report name and SSN and 6) Submit the data as a vertical bar (pipe) delimited file.

Please note formatting, renumbering and minor technical changes in the regulations may occur.

The proposed regulations may be reviewed during regular business hours at the office of the Health Policy Commission, 2055 S. Pacheco, Suite 200, Santa Fe, New Mexico, 87505. Copies of the proposed regulations may be obtained by contacting Peggy Schummers at (505) 827-6209 or by email at [Peggyva.schummers@state.nm.us](mailto:Peggyva.schummers@state.nm.us), or by going online to the Commission website at [www.hpc.state.nm.us/pages/a-z/atoz.html](http://www.hpc.state.nm.us/pages/a-z/atoz.html) Rule Changes.

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

Persons who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 9:00 A.M. on the date of the

hearing. Please send comments to:

Peggy Schummers  
NM Health Policy Commission  
2055 S. Pacheco, Suite 200  
Santa Fe, NM 87505

You may send comments electronically to:  
[Peggya.schummers@state.nm.us](mailto:Peggya.schummers@state.nm.us)

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Peggy Schummers, HR Manager, by October 1, 2008. Ms. Schummers can be reached at the above address and phone. TDD and TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users (505) 275-7333; outside of Albuquerque: 1-800-659-1779.)

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

**NOTICE**

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on October 15, 2008, in the Law Library at the Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico.

The subject of the hearing will be Emergency Medical Services for Aliens. The Human Services Department, Medical Assistance Division, is proposing amendments to 8.200.400 NMAC, *General Medicaid Eligibility*, and ESA 400, *Emergency Medical Services for Aliens (Category 085)*, and ESA 600, *Benefit Description*, to make eligibility consistent with federal law and other Medicaid rules and to remove the retroactive provision.

Interested persons may submit written comments no later than 5:00 p.m., October 15, 2008, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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 any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alterna-

tive formats and special accommodations.

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/register.html](http://www.state.nm.us/hsd/register.html) or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO LIVESTOCK BOARD**

**NEW MEXICO LIVESTOCK BOARD**

**NOTICE OF RULEMAKING AND ADOPTION OF RULE HEARING  
AND REGULAR BOARD MEETING**

**NOTICE IS HEREBY GIVEN** that a rulemaking and adoption of rule hearing and a regular board meeting will be held on Tuesday, September 30, 2008, in the 2nd floor Executive Conference Room at the Bank of the West Building, 5301 Central Ave., NE, Albuquerque, New Mexico at 9:00 a.m. The Board will initiate rules regarding bovine tuberculosis, animal cruelty, and will update existing rules and discuss other matters of general business.

Copies of the rule can be obtained by contacting Myles C. Culbertson, Executive Director, New Mexico Livestock Board, 300 San Mateo NE Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161. Copies of the agenda may be obtained at New Mexico Livestock Board office or by calling (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

**NEW MEXICO PUBLIC REGULATION COMMISSION  
ADMINISTRATIVE SERVICES DIVISION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE ADOPTION  
OF PROPOSED AMENDMENTS TO  
THE COMMISSION'S CORPORATIONS  
RULES,**

**Case No. 08-00079-CO**

**ADMINISTRATION SERVICES DIVISION  
STAFF OF THE PUBLIC REGULATION  
COMMISSION,**

**Petitioner.**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE** is hereby given that the New Mexico Public Regulation Commission ("NMPRC" or the "Commission") is commencing a rulemaking proceeding for the purpose of addressing (1) proposed amendments to NMPRC Rule 12.3.1 NMAC governing fees for expedited filing of applications for all corporations and other regulated entities; (2) a proposed replacement of NMPRC Rule 12.3.2 NMAC governing domestic and foreign profit corporations; and (3) a proposed replacement of NMPRC Rule 12.3.3 NMAC governing domestic and foreign nonprofit corporations. The proposed rule amendments and the proposed rule replacements would be promulgated under authority granted to the Commission by the New Mexico Constitution, Article XI, Section 2 (1996), and by the Legislature pursuant to NMSA 1978 Sections 8-8-4 and 8-8-15. Copies of the proposed amendments and the proposed rule replacements are attached hereto as Attachments A, B and C, respectively.

The Commission's Administrative Services Division Staff filed a Petition to Initiate Rulemaking on March 12, 2008: The Petitioner requested the Commission to commence a rulemaking proceeding (1) to amend NMPRC Rule 12.3.1 NMAC governing general provisions for corporations and other regulated entities; (2) to replace NMPRC Rule 12.3.2 NMAC governing domestic and foreign profit corporations and (3) to replace NMPRC Rule 12.3.3 NMAC governing domestic and foreign nonprofit corporations. The proposed changes involve (1) requiring expedited handling and establishing filing fees for



expedited handling of applications filed by corporations and other regulated entities; (2) clarifying that the filing year for biennial and supplemental reports for profit corporations, not assigned a duplicate certificate number before 1980, is based on taxable year ends; (3) providing for a single form and set of instructions for the filing of initial, biennial and supplemental reports by domestic and foreign profit corporations; and (4) providing for a single form and set of instructions for the filing of initial, annual and supplemental reports by domestic and foreign nonprofit corporations. In addition, the proposed amendments to Rule 12.3.1 NMAC require the Commission's Corporations Bureau to periodically post on the Commission's website the Bureau's average time for processing corporate applications. The proposed amendments to Rule 12.3.2 NMAC also would change the current provision stating that a penalty of \$200 is required for late filed forms to a provision stating that the penalty set by statute will be required for late filed forms.

Any person wishing to comment on the proposed rule amendments and rule replacements may do so by submitting written comments no later than October 7, 2008. Any person wishing to respond to comments may do so by submitting written response comments no later than October 15, 2008. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft amendment and rules should be provided in legislative format.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Additional copies of the proposed amendments to Rule 12.3.1 NMAC and proposed replacement rules 12.3.2 NMAC and 12.3.3 NMAC can be obtained from, and comments on the proposed rule, shall be sent to:

Docketing Office  
NMPRC-Corporations Bureau  
PERA Bldg. Room 408  
1120 Paseo de Peralta 87501  
PO Box 1269  
Santa Fe, New Mexico 87504-1269  
Telephone: (505) 827-4526

A public comment hearing will begin at **2:00 p.m. October 21, 2008** in the Fourth Floor Hearing Room, PERA Building, 1120 Paseo del Peralta, Santa Fe, New Mexico to receive oral comment and to clarify or supplement written comments.

No formal testimony or other formal evidence will be taken at the hearing as this is a rule-making proceeding.

Pursuant to NMSA 1978, Section 8-8-15(B), this notice, including Attachment A, B and C shall be mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice. Also pursuant to Section 8-8-15.B, this notice shall be published, without Attachments A, B and C, at least thirty days before the hearing in at least two newspapers of general circulation in the state and in the *New Mexico Register*. Additionally, this notice will Attachments A, B and C shall be posted on the Commission's web site.

Copies of any Final Order adopting the proposed amendments and proposed rules will be sent, along with copies of the amendments and rules, to the members of the PRC's Corporations Advisory Committee.

**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico this 21<sup>st</sup> day of August, 2008.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**JASON MARKS, CHAIRMAN**

**DAVID W. KING, COMMISSIONER**

**BEN R. LUJAN, COMMISSIONER**

**CAROL K. SLOAN, COMMISSIONER**

**SANDY JONES, VICE CHAIRMAN**

**NEW MEXICO PUBLIC REGULATION COMMISSION  
TRANSPORTATION DIVISION**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE ADOPTION  
OF PROPOSED AMENDMENTS TO  
THE COMMISSION'S TRANSPORTATION  
RULE 18.3.2.29 NMAC**

**Case No. 08-00284-TR-P**

**NOTICE OF PROPOSED RULEMAKING**

**NOTICE** is hereby given that the New Mexico Public Regulation Commission ("Commission") is commencing a rulemaking proceeding for the purpose of addressing a proposed amendment to Rule 18.3.2.29 NMAC, pursuant to NMSA 1978 § 65-2A-11. On August 19, 2008, the Commission's Transportation Division Staff filed a Petition requesting that the Commission initiate rulemaking to amend NMPRC Rule 18.3.2.29 NMAC to allow non-emergency medical transportation applicants to substitute a valid Department of Health and Human Services contract or Letter of Commitment, for an affidavit, if it can show privity with Department of Health and Human Services and meets all Federal and State legal requirements.

NMSA §65-2-11 states "that satisfactory proof of urgent and immediate need shall be made by affidavit or 'other verified proof' as the Commission shall by rule prescribe". Currently, pursuant to 18.3.2.19 NMAC, an applicant for temporary authority of non-emergency medical transportation must show that the public has an urgent and immediate need for the proposed transportation service by filing affidavits from one or more persons having need of the service and either (1) stating that no other motor carrier is providing transportation service in the territory that the applicant seeks to serve; or (2) stating that another motor carrier is providing such transportation service, but that such transportation service is inadequate in rates, routes or service.

Any person wishing to comment on the proposed rule amendments may do so by submitting written comments no later than October 21, 2008, or the date the Final Order is issued, whichever is sooner. Any person wishing to respond to comments may do so by sub-

mitting written response comments no later than October 31, 2008. Comments suggesting changes to the rule amendments as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft amendment and rules should be provided in legislative format.

All pleadings, including comments, shall bear the caption and case number contained at the top of this notice.

Written comments or written response comments shall be sent to:

New Mexico Public Regulation Commission  
Records Division  
**Attention: Case No. 08-00284-TR-P**  
224 East Palace Avenue, Marian Hall  
Santa Fe, NM 87501

Additional copies of the proposed amendments to Rule 18.3.2.29 NMAC can be obtained from either the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), under "Public Notices", then "Transportation" or shall be sent to:

Docketing Office  
NMPRC- Transportation Division PERA Bldg. Room—  
1120 Paseo de Peralta 87501  
PO Box 1269  
Santa Fe, New Mexico 87504-1269

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico on this 28th day of August, 2008.**

#### NEW MEXICO PUBLIC REGULATION COMMISSION

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**JASON MARKS, CHAIRMAN**

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**SANDY JONES, VICE-CHAIRMAN**

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**DAVID W. KING, COMMISSIONER**

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**BEN R. LUJAN, COMMISSIONER**

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**CAROL K. SLOAN, COMMISSIONER**

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### NEW MEXICO DEPARTMENT OF PUBLIC SAFETY MOTOR TRANSPORTATION DIVISION

#### NOTICE

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

The Department of Public Safety will be holding a public hearing for the sake of receiving comments on proposed amendment revisions to 18.2.3 NMAC, the Motor Carrier Regulation pertaining to Motor Carrier Safety. The hearing will held at 10:00 A.M. on October 22, 2008, at the auditorium of the NM Law Enforcement Academy 4491 Cerrillos Road, Santa Fe, New Mexico.

Proposed amendments to the rule include, but not limited to, adoptions with modifications of Parts 107, 171, 172, 173, 177, 178, 180, 40, 382, 385, 387, 390, 391, 392, 393, 395, 396 and 397, of the Code of Federal Regulation (49 CFR).

Copies of the proposed amendments may be obtained by calling Ron Cordova at 505.827.0302. Comments on these amendments are invited. Oral comments may be made at the hearing, or written comments may be substituted by mail to Ron Cordova at the Department of Public Safety, Motor Transportation Division, PO Box 1628, Santa Fe, NM 87504-1628, no later than October 21, 2008. Any individual with a disability, who is in need of a reader, amplifier, or other form of auxiliary aid or service in order to attend or participate in the hearing, should contact Mr. Cordova at least ten (10) days prior to the hearing.

### NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

#### LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board will hold a Rule Hearing on October 17, 2008. Following the Rule Hearing the New Mexico Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board will convene a regular meeting to adopt the rules and take care of regular business. The Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Toney Anaya Building, West Capitol Complex, 2550 Cerrillos Road, Santa Fe, NM in the Rio Grande Conference Room, 2nd Floor.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.26 NMAC: Part 2 Licensure Requirements, Part 4 Annual Renewal of Licenses, Part 5 Continuing Education, and Part 9 Code of Ethics.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4640 after September 17, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than October 1, 2008. Persons wishing to present their comments at the hearing will need ten (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4640 at least two weeks prior to the meeting or as soon as

possible.

Vadra Baca, Administrator  
PO Box 25101- Santa Fe, New Mexico  
87504

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**End of Notices and  
Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS

PALACE OF THE GOVERNORS  
STATE HISTORY MUSEUM  
DIVISION

This is an amendment to 4.51.57 NMAC Sections 1, 5, 11 and 12; new Sections 2, 3, 4, 6, and a change to the part name, effective 9/15/08. This action also formally renumbers and reformats MNM: Rule 57 (filed 7/13/95) to 4.51.57 NMAC, in accordance with the current NMAC requirements, effective 9/15/08.

#### **PART 57**      ~~[RULES AND REGULATIONS GOVERNING]~~ **GOVERNANCE OF THE PORTAL PROGRAM AT THE PALACE OF THE GOVERNORS**

**4.51.57.1**      **ISSUING AGENCY:** [Office of Cultural Affairs, Museum Division (Museum of New Mexico)] Department of Cultural Affairs, Palace of the Governors State History Museum Division.  
[4.51.57.1 NMAC - Rn, MNM: Rule 57 & A, 9/15/08]

**4.51.57.2**      **SCOPE:** Museum of New Mexico, palace of the governors/New Mexico history museum staff, portal program participants, and interested members of the public.  
[4.51.57.2 NMAC - N, 9/15/08]

**4.51.57.3**      **STATUTORY AUTHORITY:** Section 9-4A-6(E) NMSA 1978, as amended, of the cultural affairs department act authorizes the secretary of the cultural affairs department to make and adopt such reasonable procedural rules as necessary to carry out the duties of its divisions. Section 18-3-3(M) NMSA 1978 authorizes the board of regents of the museum of New Mexico to adopt such rules and regulations and set such policy directives as may be necessary to carry out the provisions of such article.  
[4.51.57.3 NMAC - N, 9/15/08]

**4.51.57.4**      **DURATION:** Permanent.  
[4.51.57.4 NMAC - N, 9/15/08]

**4.51.57.5**      **EFFECTIVE DATE:** July 13, 1995, unless a later date is cited in the history notes in square brackets at the end of a section.  
[4.51.57.5 NMAC - Rn, MNM: Rule 57 & A, 9/15/08]

**4.51.57.6**      **OBJECTIVE:** The objective of this rule is to govern and regulate the operation of the portal program and the quality of the products being offered for sale on the portal of the palace of the governors.  
[4.51.57.6 NMAC - N, 9/15/08]

**4.51.57.10**      **OPERATION OF THE PORTAL PROGRAM:** Within the area defined, the museum will permit a program involving the daily sale of handmade New Mexican Indian arts and crafts by qualified participants, subject to the following conditions:

A. Participants in the portal program must keep the area clean.

B. The sales activities of the portal program participants shall be conducted upon the brick surface; no tables or elevated stands are permitted, and no materials or advertising may be hung or posted on walls or posts.

C. ~~[The use by portal program participants of televisions, radios, tape recorders and players, binoculars, cellular phones, cameras, credit card machines and other modern appliances or equipment not essential to participation in the portal program shall not be permitted.]~~ The use by portal program participants of televisions, radios, tape recorders and players, binoculars, cell phones and other modern equipment not essential to participation in the portal program shall not be permitted; however, the use of credit card machines by portal participants is an essential tool for conducting business and sales on the portal, and therefore will be allowed. Accepting credit card payments is the sole responsibility of individual portal participants. The portal committee members and the museum are not the liable for the portal participants' use of credit card machines or the outcome of transactions resulting from the use of credit card machines by portal participants.

D. On occasion when there are more participants who want to be vendors on a particular day than spaces, a drawing shall be held by the portal committee and/or the director of the palace or designee for the available spaces. On these occasions the participants shall be counted, and a chip for each participant present at the portal shall be put into a hopper or other type of container. The hopper or other type of container shall contain numbered chips for the spaces under the portal, except for the duty officer's space, as well as blank chips. The total number of chips shall equal the number of participants present. Each participant shall draw a chip. If, after draw has been completed, all the numbered chips have not been drawn, a second draw shall be held for

those participants who are present and who initially drew blank chips, and subsequent draws shall be held as necessary, until all spaces under the portal have been drawn. A waiting list for vending spaces vacated during the day shall be kept. The first person on the waiting list shall be assigned the first vacated space. If the first person is not present when a space has been vacated, the second person on the waiting list shall be assigned the vacated space, and so on until the waiting list has been exhausted. Vendors coming to the portal after the draw for vending spaces shall have their names added to the waiting list in the order of their appearance.

E. The portal program shall commence at 8:00 a.m. of each day of operation, and shall terminate each day upon departure of the last participant vendor from the program area. Spaces shall be obtained by the actual participant. No participant may set up prior to 8:00 a.m., and must be completely set up by 10:00 a.m., and, with the exception of the first space west of the building entrance, which shall be held each day for the designated duty officer of the portal committee, no spaces shall be reserved.

F. After 10:00 a.m., any participant who has left his or her space for a period exceeding one hour shall be considered to have abandoned that space, and it shall be available for reassignment to another. Neither the museum nor the members of the portal committee assume any responsibility for merchandise left unattended.

G. The making of items for sale in the area designated is not permitted; only simple adjustments or repairs to items already made is allowed.

H. No participant in the portal program may engage another individual not a member of his or her household to sell nor may any participant solicit sales for another within the designated area.

I. For reasons of safety, children shall not be allowed to accompany participants in the portal program while the participants sell under the portal.

J. The director of the palace shall require identity badges for portal program participants, to be worn or displayed on cloth when selling under the portal or taking part in other portal activities. Any such badges, if issued, shall remain the property of the museum and shall be surrendered by the participant on the museum's request. If the badge is lost or stolen, the museum shall charge a \$5.00 replacement fee.

[07/13/95; 4.51.57.10 NMAC - Rn, MNM: Rule 57, Section 2 & A, 9/15/08]

**4.51.57.12 ANNUAL MEETING AND PUBLIC HEARING TO ADOPT RULES AND REGULATIONS:**

A. ~~[Annually, on a day in April, at a place to be provided by the museum, a meeting shall be held of participants and all other interested public. Said meeting shall be held in accordance with provisions of the Open Meetings Act, NMSA 1978, Sections 10-15-1 through 10-15-4. The annual meeting shall be announced four weeks in advance of the date and shall be open to the public.]~~ Annually, on a day in October, at a place to be provided by the museum, a meeting shall be held of the participants and all other interested public. Said meeting shall be held in accordance with the provisions of the Open Meetings Act, Sections 10-15-1 et seq., NMSA 1978. The annual meeting shall be announced four weeks in advance of the meeting date and shall be open to the public.

B. No action of any type shall be taken on applications (new applications and demonstrations) two months prior to the annual meeting. This rule does not apply to participant violations.

C. On matters requiring a vote, the vote shall be restricted to qualified participants in the portal program.

D. At such meetings, copies of the proposed revisions to the guidelines, rules and regulations governing the portal program of the palace of the governors, if any, and copies of existing guidelines, rules and regulations governing the portal program shall be available for explanation and discussion and the portal committee shall be elected by vote of the participants present at the meeting.

E. The board of regents, museum of New Mexico, shall hold a public hearing in accordance with NMSA 1978, Section 9-6-11(e) of the Cultural Affairs Act, to adopt these rules and regulations. [7/13/95; 4.51.57.12 NMAC - Rn, MNM: Rule 57, Section 4 & A, 9/15/08]

**NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD**

**This is an amendment to 20.7.10 NMAC, Sections 100 and 101, effective 10/15/2008. It includes a revision of 40 CFR 141 date to July 1, 2007, and adoption of federal Lead and Copper Rule through fed reg reference (not updated in CFR yet). It also includes a revision of 40 CFR 143 date to July 1, 2007.**

**20.7.10.100 ADOPTION OF 40 CFR PART 141:**

A. Except as otherwise provided in this section, the regulations of the USEPA set forth at 40 CFR Part 141

through July 1, ~~[2005]~~ 2007 are hereby incorporated by reference into this part. Notwithstanding the incorporation of 40 CFR Part 141 through July 1, ~~[2005]~~ 2007, the following USEPA regulations are also incorporated by reference to the extent that they amend Part 141:

~~[(1) Stage 2 Disinfectants and Disinfection Byproducts Rule, 71 Fed. Reg. 388 (Jan. 4, 2006);~~

~~(2) Long Term 2 Enhanced Surface Water Treatment Rule, 71 Fed. Reg. 654 (Jan. 5, 2006);] Lead and Copper Rule, 72 Fed. Reg. 57782 (Oct. 10, 2007).~~

B. The term "state" means the New Mexico environment department when used in 40 CFR Part 141, in lieu of the meaning set forth in 40 CFR section 141.2.

C. The term "service connection" has the meaning set forth in Subsection L of 20.7.10.7 NMAC, in addition to the meaning set forth in 40 CFR section 141.2.

[20.7.10.100 NMAC - N, 12/04/2002; A, 04/16/2007; A, 10/15/2008]

**20.7.10.101 ADOPTION OF 40 CFR PART 143:**

A. Except as otherwise provided, the regulations of the USEPA set forth at 40 CFR Part 143 through July 1, ~~[2005]~~ 2007 are hereby incorporated by reference into this part.

B. The term "state" means the New Mexico environment department when used in 40 CFR Part 143, in lieu of the meaning set forth in 40 CFR section 143.2. [20.7.10.101 NMAC - N, 12/04/2002; A, 04/16/2007; A, 10/15/2008]

**NEW MEXICO DEPARTMENT OF GAME AND FISH**

This is an amendment to 19.30.10 NMAC, Sections 9, 10 and 12, effective 9-15-2008.

**19.30.10.9 REPORTING REQUIREMENTS FOR LICENSED OR PERMITTED TRAPPERS AND FURBEARER HUNTERS:**

A. All licensed or permitted trappers and furbearer hunters must report the results of their hunting or trapping activities no later than ~~[March 31]~~ April 7 annually for licenses held in ~~[that]~~ the previous license year.

B. The department shall provide each trapper and furbearer hunter with a toll-free telephone number and a website address that can be accessed to provide reports of hunting or trapping activities.

C. Licensed or permitted trappers and furbearer hunters who fail to report the results of their hunting or trap-

ping activities by ~~[March 31]~~ April 7 will have any special entry hunt application with an application deadline later than ~~[April 1]~~ April 7, any population reduction authorization and any private land authorization, submitted for the following license year, rejected.

D. Individuals licensed or permitted to trap or hunt furbearers, but not engaging in any hunting or trapping activity, must still submit a report.

E. Upon submission of the hunting or trapping report, the department shall issue the hunter or trapper a confirmation code validating a fulfillment of the reporting requirement. Inclusion of a confirmation code for each license or permit subject to the reporting requirement on an application for any special entry hunt with an application deadline later than ~~[April 1]~~ April 7, any population reduction authorization and any private land authorization submitted for the following license year will be required for the application to be considered.

[19.30.10.9 NMAC, 9-1-2006; A, 9-15-2008]

**19.30.10.10 LATE FULLFILLMENT OF REPORTING REQUIREMENT:**

A. Licensed or permitted deer and elk hunters and trapper license holders who fail to report the results of their hunting or trapping activities by specified deadlines may submit their hunting or trapping report late with payment of a fee specified by the department not to exceed \$20 for each late report. Late reporting must occur prior to the annual specified deadline for any special entry hunt applications.

~~B. [Licensed or permitted deer and elk hunters applying for special entry hunts that have a specified application deadline prior to February 15 must fulfill their reporting requirement prior to submitting application and will not need the ability to fulfill their reporting requirement late.]~~

~~C.]~~ Elk hunters licensed pursuant to conversion of a landowner elk authorization who fail to report the results of their hunting activities by specified deadlines may submit their hunting or trapping report late with payment of a fee specified by the department not to exceed \$20 for each late report. Late reporting must occur prior to the annual specified deadline for any special entry hunt applications including the conversion of any landowner authorization to a license.

[19.30.10.10 NMAC - N, 9-1-2006; A, 9-15-2008]

**19.30.10.12 WEBSITE REPORTING INCENTIVE:** All deer and elk hunters who submit their hunting activity report using the website option by the estab-

lished deadline of February 15 annually, may be entered in a drawing for special big game licenses or permits made available in rule and specifically designated for sportsmen participating in hunting activity reporting. All licensed trappers who submit their trapping activity report using the website option by the established deadline of ~~[March 31]~~ April 7 will also be eligible for this drawing.

[19.30.10.12 NMAC - N, 9-1-2006; A, 9-15-2008]

## NEW MEXICO HUMAN SERVICES DEPARTMENT

### MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.300.1 NMAC, sections 3, 5, 6, 8, 9 and 10, effective September 15, 2008.

**8.300.1.3 STATUTORY AUTHORITY:** The New Mexico medicare 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. Pamp. 1991).

[2/1/95; 8.300.1.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 5/1/04; A, 9/15/08]

**8.300.1.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.300.1.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 5/1/04; A, 9/15/08]

**8.300.1.6 OBJECTIVE:** The objective of these ~~[regulations]~~ rules is to provide policies for the service portion of the New Mexico ~~[medicare program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.]~~ medical assistance programs.

[2/1/95; 8.300.1.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 5/1/04; A, 9/15/08]

**8.300.1.8 MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of ~~[medicare eligible individuals]~~ eligible recipients by furnishing payment for quality health services at levels comparable to private health plans. [2/1/95; 8.300.1.8 NMAC - Rn, 8 NMAC 4.MAD.002, 5/1/04; A, 9/15/08]

**8.300.1.9 GENERAL PROGRAM DESCRIPTION:** ~~[The New Mexico medicare program (medicare) is administered pursuant to regulations prom-~~

~~ulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended. State administrative authority is provided, pursuant to Sections 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991). The medical assistance division (MAD) of the New Mexico human services department is responsible for the administration of the medicare program. This joint federal and state program provides payment for medically necessary health services furnished to eligible recipients.]~~ Human services department (HSD), through MAD, is responsible for the administration of the medicare program and other health care programs. This joint federal and state program provides payment for medically necessary health services furnished to eligible recipients.

[2/1/95; 8.300.1.9 NMAC - Rn, 8 NMAC 4.MAD.010, 5/1/04; A, 9/15/08]

**8.300.1.10 RELATIONSHIP TO MEDICARE:** ~~[Medicare]~~ MAD covers medically necessary health services furnished to ~~[individuals]~~ eligible recipients who meet specific income, resource and eligibility standards. Medicare is a federal program which offers health insurance coverage to ~~[individuals]~~ eligible recipients ~~[sixty five (65)]~~ 65 years of age or older, to those who have received disability benefits for ~~[twenty four (24)]~~ 24 consecutive months, to those who have end stage renal disease, and to other eligible ~~[individuals]~~ recipients, as specified by other provisions of the Social Security Act.

A. The state of New Mexico has entered into an agreement with the social security administration to pay medicare ~~[client]~~ eligible recipient premiums for medicare part B, and under some circumstances, medicare part A premiums.

B. After medicare has made payment for services, the medicare program pays for the medicare co-insurance and deductible amounts for all eligible medicare recipients subject to the following medicare reimbursement limitations.

(1) Medicare payment for the co-insurance and deductible is limited such that the payment from medicare, plus the amount allowed by medicare for the co-insurance and deductible, shall not exceed the medicare allowed amount for the service. When the medicare payment exceeds the amount that medicare would have allowed for the service, no payment is made for the co-insurance ~~[and/or]~~ or deductible. The claim is considered paid in full. The provider may not collect any remaining portion of the medicare co-insurance ~~[and/or]~~ or deductible from the ~~[client]~~ eligible recipient or their personal representative. For services for which medicare part B applies a 50 ~~[%]~~ percent co-insurance rate, medicare co-insurance and deductible

amounts may be paid at an amount that allows the provider to receive more than medicare allowed amount, not to exceed a percentage determined by ~~[the department]~~ HSD.

(2) The medicare program will pay toward the medicare co-insurance and deductible ~~[in full when the amount]~~ to the extent that the amount paid by medicare and the allowed medicare co-insurance and deductible together do not exceed the medicare allowed amount. ~~[or when]~~ The medicare program will pay the medicare co-insurance and deductible when the medicare program does not have a specific amount allowed for the service.

[2/1/95; 8.300.1.10 NMAC - Rn, 8 NMAC 4.MAD.011 & A, 5/1/04; A, 9/15/08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT

### MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.300.2 NMAC, Sections 3, 6, 7, 8 - 12, 18, 21, and 23 - 28, effective September 15, 2008.

**8.300.2.3 STATUTORY AUTHORITY:** The New Mexico medicare program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended and by ~~[the state human services department pursuant to state statute. See NMSA 1978 27-2-12 et seq.]~~ state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).

[8.300.2.3 NMAC - N, 7-1-03; A, 9-15-08]

**8.300.2.6 OBJECTIVE:** The objective of this ~~[regulation]~~ rule is to provide Health Insurance Portability and Accountability Act (HIPAA) ~~instructions~~ and policies for the New Mexico [medicare program. These policies describe eligible divisions, covered services, and noncovered services.] medical assistance programs.

[8.300.2.6 NMAC - N, 7-1-03; A, 9-15-08]

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

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

B. **Alternate means of communication:** A communication made other than in writing on paper, or made orally to the ~~[individual]~~ recipient or their personal representative.

C. **Amend or amend-**

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

**D. Authorized HCC employee:** A person employed within the [HCC] health care component (HCC) workforce who is authorized by the immediate supervisor or by HCC policies to perform the task.

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

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

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

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

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

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

or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

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

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

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

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

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

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

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

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

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

**Q. Payment:** All HCC activities undertaken in its role as a health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan, and HCC activities undertaken [in its role as a health care provider] to obtain or provide reimbursement for the provision of health

care. Such activities include but are not limited to:

(1) determination of eligibility or coverage;

(2) risk adjusting amounts due based upon health status or demographic characteristics;

(3) billing, claims management, collection activities, and related health care data processing;

(4) review of health care services with respect to medical necessity, coverage, appropriateness of care, or justification of charges;

(5) utilization review activities; and

(6) disclosure to consumer reporting agencies of lawful elements of PHI relating to collection of premiums or reimbursement.

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

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

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

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

**V. Public health agency:** An agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or entity acting under a grant of



authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

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

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

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

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

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

BB. **Valid authorization:** An authorization with all required elements, as specified in HIPAA privacy policy in Section 13 of 8.300.2 NMAC. [8.300.2.7 NMAC - N, 7-1-03; A, 9-15-08]

**8.300.2.8 MISSION STATEMENT:** The mission of the ~~[HSD]~~ 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. [8.300.2.8 NMAC - N, 7-1-03; A, 9-15-08]

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

A. **Medicaid is a health plan and a covered entity under HIPAA:** The New Mexico medicaid program under

title XIX of the Social Security Act qualifies as a health plan under HIPAA regulations at 45 CFR 160.103 and is considered a covered entity.

B. **Inconsistency between state and federal law:** In the event of any inconsistency between the federal HIPAA privacy rule and New Mexico statutes or regulations, the HIPAA privacy rule shall preempt state law, except where [45 CFR 160.203]:

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

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

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

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

[8.300.2.9 NMAC - N, 7-1-03; A, 9-15-08]

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

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

(1) HSD shall provide ~~[the HSD]~~ notice of privacy practices, update the notice as necessary, and distribute the notice and any revised notices to all ~~[medicaid recipients]~~ recipients or their personal representatives.

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

(3) The name of every recipient and, as applicable, their personal representative to whom the HSD notice of privacy practices is sent shall be recorded.

B. **Notice schedule:**

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

recipient's or their personal representative's last known address no later than November 1, 2003.

(2) ~~[For revisions made to the notice of privacy practices, a copy of the revised notice of privacy practices shall be mailed to each recipient enrolled in New Mexico medicaid within sixty (60) days of the effective date of the revision.]~~ For revisions made to the notice of privacy practices, a copy of the revised notice of privacy practices shall be mailed to each enrolled MAD eligible recipient or their personal representative within 60 calendar days of the effective date of the revision.

(3) For ~~[new medicaid recipients]~~ a new eligible recipient approved after July 1, 2003, a copy of the notice of privacy practices shall be mailed with the eligible recipient's new medicaid card or their eligibility determination notice.

(4) At least once every three years, HSD shall notify ~~[medicaid]~~ eligible recipients or their personal representatives by mail of the availability of the notice of privacy practices and how to obtain the notice of privacy practices.

[8.300.2.10 NMAC - N, 7-1-03; A, 9-15-08]

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

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

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

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

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

(4) If the recipient or their personal representative is not present when the

request is approved or denied, HCC shall notify the recipient or ~~[the recipient's]~~ their personal representative of the decision in writing and retain the copy of the decision in the recipient's file.

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

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

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

(a) If the request will be granted in full, the PSO shall provide a written response arranging with the recipient or ~~[the recipient's]~~ their personal representative a convenient time and place to inspect or obtain a copy of the PHI, or may mail the copy of the PHI at the recipient's or their personal representative's request; and shall discuss the scope, format, and other aspects of the recipient's or their personal representative's request with the recipient or ~~[the recipient's]~~ their personal representative as necessary to facilitate timely provision.

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

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

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

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

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

(i) the basis for the

denial,

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

(iii) a description of how the recipient or their personal representative may complain to the PSO or to the secretary of HSD; this description shall include the title and telephone number of the PSO and the secretary of HSD.

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

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

(a) psychotherapy notes;

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

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

(d) when the access to the PHI requested is reasonably likely to endanger the life or physical safety of the ~~[individual]~~ recipient or another person as determined by a licensed health care professional by using his/her professional judgment;

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

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

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

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

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

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

(b) for a facility directory;

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

(d) for national security purposes;

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

(f) made prior to July 1, 2003;

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

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

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

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

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

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

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

(c) the HCC must provide free of charge the first accounting report within any ~~[twelve]~~ 12-month period; if additional requests for an accounting are made within the same ~~[twelve month]~~ 12-month period, the HCC shall notify the recipient or their personal representative if a fee will be charged for the additional copies;

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

**D. Setting restrictions:** ~~[Recipients]~~ A recipient or their personal representative may request restrictions on the uses and disclosures of their own protected health information (PHI) by submitting a request in writing to the HIPAA privacy and security officer (PSO).

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

(2) If the HCC does not maintain the PHI that is the subject of the request for setting restrictions, the PSO shall inform the

recipient or ~~the recipient's~~ their personal representative where to direct the request, if known.

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

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

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

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

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

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

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

**E. Amendments:** It is the policy of the HCC that the HCC shall allow ~~recipients~~ a recipient to request that an amendment be made to the recipient's own protected health information (PHI) contained in a designated record set as long as the PHI was originated by the HCC.

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

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

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

(4) The possessor of the PHI shall:

(a) review the recipient's or their personal representative's request for an amendment;

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

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

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

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

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

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

(b) the PSO shall inform the recipient or their personal representative that the amendment is accepted;

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

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

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

(1) Within five ~~(5)~~ working days of receipt of the complaint, the PSO shall

initiate a HIPAA privacy investigation.

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

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

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

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

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

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

(a) provide recipient or their personal representative with a timely, written denial, which includes the reason for the denial;

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

(c) if necessary, prepare a written rebuttal to the recipient's or their personal representative's statement of disagreement and provide a copy to the recipient or their personal representative;

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

(i) recipient's or their personal representative's request for an amendment;

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

(iii) the recipient's or their personal representative's statement of disagreement, if any; and

(iv) the HCC's rebuttal, if any.

[8.300.2.11 NMAC - N, 7-1-03; A, 9-15-08]

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

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

(1) determine if a valid authorization is presented. See 8.300.2.13 NMAC;

(2) determine the identity and authority of the requestor as per 8.300.2.21 NMAC;

(3) if a valid authorization is presented and the identity and authority of the requestor is verified, the HCC is authorized to disclose the PHI in accordance with the valid authorization's instructions;

(4) HCC shall retain the valid authorization in the recipient's file;

(5) the valid authorization and the disclosure shall be documented in the PSO's database;

(6) if the request is not accompanied by a valid authorization, the HCC shall determine if an exception to the authorization requirement applies; and

(7) if no exception applies, the HCC shall deny the request for disclosure of PHI, document the denial and instruct the requestor that a valid authorization shall be obtained from the recipient or their personal representative before MAD will disclose PHI.

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

(1) disclosures to the recipient or personal representative pursuant to his/her request [45 CFR 164.502(a)(1)(i)];

(2) for purposes of TPO [45 CFR 164.502 and 506];

(3) when a consent, authorization, or other express legal permission in writing was obtained from the eligible recipient prior to July 1, 2003, and is on file in an HCC location that permits the use or disclosure of PHI [45 CFR 164.532]; and

(4) when the use or disclosure of PHI is limited to the minimum necessary to or for the following:

(a) ~~assisting~~ assist disaster relief agencies [45 CFR 164.510(b)(4)];

(b) coroners, medical investigators, funeral directors, and organ procurement organizations as authorized by law [45 CFR 164.512(g) and (h)];

(c) ~~averting~~ avert a serious and imminent threat to the health or safety of a

person or the public [45 CFR 164.512(j)];

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

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

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

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

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

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

[8.300.2.12 NMAC - N, 7-1-03; A, 9-15-08]

### 8.300.2.18 TERMINATION OF RESTRICTIONS:

A. **Termination requirements:** Restrictions on the uses and disclosures of PHI shall be terminated if:

(1) the recipient or the recipient's personal representative requests the termination in writing;

(2) the PSO informs the recipient or the recipient's personal representative in writing that the HCC agreement to a restriction has ended and that the termination of the restriction is effective with any PHI created or received after the recipient or the recipient's personal representative is notified of the termination [45 CFR 164.522(a)(2)]; or

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

B. ~~If a termination of restriction is granted~~ **Consideration of request:**

(1) The PSO shall approve or deny the request within five ~~(5)~~ working days. If approved, the PSO shall notify the recipient or the recipient's personal representative in writing of the termination request and give the recipient or the recipient's personal representative ten ~~(10)~~ working days to disagree in writing; if denied, the PSO shall notify the requestor in writing.

(2) If the recipient or the recipi-

ent's personal representative disagrees, the PSO shall inform the requestor of the disagreement and require a response in three ~~(3)~~ working days to review the communication from the recipient or the recipient's personal representative to ascertain if the disagreement by the recipient has bearing on the PSO final decision to terminate the restriction.

(3) The PSO shall issue a final decision within five ~~(5)~~ working days and notify the recipient or personal representative and the MAD requestor.

(4) The PSO shall record the termination of restriction in the PSO's database.

[8.300.2.18 NMAC - N, 7-1-03; A, 9-15-08]

**8.300.2.21 VERIFYING IDENTITY AND AUTHORITY:** If the identity or authority of a requestor of PHI is unknown, the identity and authority of that requestor shall be verified prior to any disclosure [45 CFR 164.514(h)].

A. **Identification:** Upon receipt of a request for PHI, an authorized HCC employee must determine whether the requestor is a recipient or personal representative of a recipient.

(1) If the requestor is unknown to the authorized HCC employee, the employee shall request proof of identity, such as a photograph ID, credit card issued to the requestor, or medicaid card issued to the requestor.

(2) If the request is made over the phone, the HCC employee shall require proof of identity by asking for a social security number or omnicaid system ID.

(3) If the requestor is the recipient, a valid signed authorization satisfies the authority requirement.

(4) If the requestor is the recipient's personal representative, the HCC employee shall require proof of authority to act on the recipient's behalf.

(5) If the request for PHI disclosure is by a government official, and the government official's identity is unknown, the HCC employee shall verify the identity of the government official by viewing an agency identification badge or other official credentials.

(6) The HCC employee shall forward all requests for PHI for research purposes to the PSO. See 8.300.2.14 NMAC.

B. **Authority:** Once the identity of the government official is verified (or if already known), the HCC employee shall verify the authority of the request. If the disclosure of PHI is required by law, the employee shall disclose the PHI and record the disclosure in the PSO's database. If there are questions as to whether PHI disclosure is required by law, the employee shall seek assistance from OGC prior to any PHI disclosure.

(1) HCC shall forward all requests for PHI from subpoenas, legal requests, or for law enforcement purposes to OGC within two ~~(2)~~ working days.

(2) For any requests for PHI received, OGC shall determine the identity of the requestor and the authority of the requestor. OGC then shall approve or deny the request and take the appropriate legal action.

**C. Restrictions or amendments:** If a valid authorization from an ISD location is received because a restriction or amendment is recorded in the PSO's database, the HCC shall take the following action.

(1) If a restriction is already documented, and the valid authorization from the recipient is asking for the restricted PHI to be disclosed, the HCC shall notify the recipient in writing within three ~~(3)~~ work-ing days that a previously set restriction must be revoked in writing by the recipient before the disclosure can be made.

(2) If an amendment is requested, within three ~~(3)~~ work-ing days the HCC shall determine if the PHI to be disclosed has been amended. If yes, the HCC shall disclose the amended PHI.

(3) The HCC shall record the disclosure in the PSO's database.  
[8.300.2.21 NMAC - N, 7-1-03; A, 9-15-08]

**8.300.2.23 STAFF TRAINING:** All members of the HCC workforce shall be trained within appropriate timeframes on HIPAA privacy policies and procedures regarding the proper use and disclosure of PHI [45 CFR 164.530(b)].

**A. Initial training:** The HCC shall:

(1) develop a training plan with HCC supervisory staff involvement to determine the timing of and level of training appropriate to members of the HCC workforce;

(2) develop bureau-specific training curricula and materials; the training material shall be maintained for six years;

(3) provide bureau-specific training for the current HCC workforce no later than July 1, 2003; and

(4) ensure documentation of initial training completion and forward documentation to the HSD office of human resources.

**B. Continuous training:** For HCC workforce members who begin employment or whose job functions change subsequent to July 1, 2003, HCC shall:

(1) within one working day of start date, notify the PSO of the new HCC workforce member, and schedule training for the new workforce member to be completed within ten ~~(10)~~ working days of the start date;

(2) for HCC workforce members whose job functions change, and who thus require a new level of training, notify the PSO and schedule the training prior to having the workforce member assume the new job duties; employees must successfully complete training within ten ~~(10)~~ working days of their start date, and evidence of training must be provided to the HSD office of human resources; and

(3) the HSD office of human resources shall retain the original signed training documentation for six ~~(6)~~ years.

**C. Privacy policy changes:** When changes are made to HCC policies or procedures or when HCC changes its privacy practices [45 CFR 164.530(b)], HCC shall:

(1) prepare relevant changes to the bureau-specific curricula;

(2) prepare changes to training materials;

(3) retain the training material for six ~~(6)~~ years;

(4) after determining affected staff with supervisor involvement, develop a training plan;

(5) ensure that the HCC workforce successfully completes training and provide individual signed documentation of training to the PSO;

(6) the PSO shall forward the individual documentation of training to the HSD office of human resources; and

(7) the HSD office of human resources shall retain the original signed training documentation for six ~~(6)~~ years.  
[8.300.2.23 NMAC - N, 7-1-03; A, 9-15-08]

**8.300.2.24 [WORKFORCE DISCIPLINARY ACTION:** ~~Any HCC employee who discloses protected health information (PHI) not allowed by HIPAA privacy policies and procedures shall be subject to appropriate disciplinary action.~~

**A. Knowingly inappropriate disclosure of protected health information:** ~~Appropriate disciplinary action may be informal discipline, such as counseling, oral reprimands, written reprimands, and mandatory training or retraining; or formal discipline, such as suspension, demotion or dismissal from employment.~~

~~(1) A HCC supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by a HCC employee.~~

~~(2) The PSO shall enter the date and name of the HCC employee into the PSO database.~~

~~(3) The PSO shall direct the supervisor to conduct a privacy investigation of the alleged inappropriate disclosure(s) within five (5) days of being notified.~~

~~(4) The supervisor shall complete the privacy investigation of the alleged inappropriate disclosure(s) within ten (10) days of notification and shall prepare a written report of the privacy investigation findings.~~

~~(5) The supervisor shall send the written report to the PSO and shall retain a copy.~~

~~(6) If the findings of the privacy investigation show that the HCC employee did not disclose PHI inappropriately, the PSO shall enter "claim not substantiated" into the PSO database by the HCC employee's name.~~

~~(7) If the findings of the privacy investigation show that the HCC employee did knowingly disclose PHI inappropriately, the PSO shall share the findings of the privacy investigation with OGC and the HSD office of human resources.~~

~~(8) The employee's supervisor, with the advice of OGC, the PSO, and the office of human resources, as appropriate, shall determine appropriate disciplinary action to be applied in accordance with principles of progressive discipline, and shall notify the PSO of the determination. Such discipline may be either informal or formal.~~

~~(a) Informal discipline: Within three (3) days of notifying the PSO of the determination of the level of disciplinary action to be applied, the supervisor shall meet with the HCC employee who knowingly disclosed PHI inappropriately to discuss the outcome of the investigation and to provide the employee with the informal disciplinary action. Any written documentation of the informal discipline that is placed in the employee's HSD personnel file shall be provided to the employee, and the employee may submit a written rebuttal for placement in the employee's HSD personnel file in accordance with Subsection A of 1.7.1.12 NMAC.~~

~~(b) Formal discipline: For an employee in career status (i.e., has completed the probationary period), within ten (10) days of notifying the PSO of the determination of the level of disciplinary action to be applied, the supervisor shall initiate the discipline in accordance with the procedures required by the state personnel board as set out in 1.7.11 NMAC, or subsequent amendment, by preparing an appropriate notice of contemplated action in accordance with 1.7.11.13 NMAC, or subsequent amendment. For an employee not in career status, such as a probationary, emergency, or temporary employee, written notice of the discipline shall be provided at least twenty-four hours prior to the imposition of the discipline in accordance with 1.7.11.11 NMAC.~~

~~(9) The supervisor shall notify the~~

PSO when the HCC employee that knowingly disclosed the PHI inappropriately has received the disciplinary action:

(10) The PSO shall enter the privacy investigation findings of "claim substantiated" along with the disciplinary action taken by the name of the HCC employee that knowingly disclosed PHI inappropriately into the PSO database.

**B. Inadvertent inappropriate disclosure of protected health information:** Appropriate disciplinary action for inadvertent inappropriate disclosure of PHI is generally informal discipline, such as counseling, oral reprimands, written reprimands, and mandatory training or retraining.

(1) An HCC supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by an HCC employee.

(2) The PSO shall enter the date and name of the HCC employee into the PSO database.

(3) The PSO shall direct the supervisor to conduct a privacy investigation of the alleged inappropriate disclosure(s) of PHI by an HCC employee within five (5) days of being notified.

(4) The supervisor shall complete the privacy investigation of the alleged inappropriate disclosure(s) of PHI within ten (10) days of notification and prepares a written report of the privacy investigation findings.

(5) The supervisor shall send the written report to the PSO and retain a copy.

(6) If the findings of the privacy investigation show that the HCC employee did not disclose PHI inappropriately, the PSO shall enter "claim not substantiated" into the PSO database by the HCC employee's name.

(7) If the findings of the privacy investigation show that the HCC employee did inadvertently disclose PHI inappropriately, the PSO shall share the findings of the privacy investigation with OGC.

(8) The PSO and the supervisor shall meet jointly with the HCC employee who inadvertently disclosed PHI within three (3) days of receipt of the written notification from the PSO to discuss the outcome of the investigation and to provide the employee with the informal disciplinary action.

(9) At a minimum, the supervisor shall take the following informal disciplinary action:

(a) give the HCC employee who inadvertently disclosed PHI inappropriately copies of the HSD HIPAA privacy policies and procedures with which the employee did not comply;

(b) require the HCC employee to read the applicable HSD HIPAA privacy

policies and procedures in the presence of the supervisor;

(c) explain to the HCC employee the potential implications to HCC when PHI is disclosed inappropriately and is in conflict with HSD HIPAA privacy policies and procedures;

(d) answer any questions the HCC employee has regarding the HSD HIPAA privacy policies and procedures; and

(e) require the HCC employee to sign and date a document stating that counseling was provided regarding the failure to comply with HSD HIPAA privacy policies and procedures.

(10) The supervisor shall give the original of the document signed and dated by the HCC employee to the HSD office of human resources, and shall also maintain a copy and immediately forward a copy to the PSO. Any written documentation of the informal discipline that is placed in the employee's personnel file shall be copied and provided to the employee, and the employee may submit a written rebuttal for placement in the employee's personnel file in accordance with Subsection A of 1.7.1.12 NMAC.

(11) Upon receiving a copy of the document, the PSO shall enter "claim substantiated" along with the disciplinary action taken by the name of the HCC employee into the PSO database.

**C. Repeated inadvertent inappropriate disclosure of protected health information:** If the findings of the privacy investigation show that a repeat inappropriate, inadvertent disclosure of PHI was made by an HCC employee, and the employee has received informal or formal discipline as provided in these HIPAA privacy procedures, the PSO in consultation with the employee's supervisor shall recommend an appropriate disciplinary action to be applied. Such discipline may be either informal or formal. Informal discipline includes counseling, oral reprimands, written reprimands, and mandatory training or retraining. Formal discipline is suspension, demotion, or dismissal.

(1) An HCC supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by an HCC employee.

(2) The PSO shall enter the date and name of the HCC employee into the PSO database.

(3) The PSO shall direct the supervisor to conduct a privacy investigation of the alleged inappropriate disclosure(s) of PHI within five (5) days of being notified.

(4) The supervisor shall complete the privacy investigation of the alleged inappropriate disclosure(s) of PHI within

ten (10) days of notification and shall prepare a written report of the privacy investigation findings.

(5) The supervisor shall send the written report to the PSO and retain a copy.

(6) If the findings of the privacy investigation show that the HCC employee did not disclose PHI inappropriately, the PSO shall enter "claim not substantiated" into the PSO database by the employee's name.

(7) If the findings of the privacy investigation show that a repeat inappropriate, inadvertent disclosure of PHI was made by a HCC employee, and the employee has received informal or formal discipline as provided in these HIPAA privacy procedures, the PSO in consultation with the employee's supervisor shall recommend an appropriate disciplinary action to be applied. Such discipline may be either informal or formal. Informal discipline includes counseling, oral reprimands, written reprimands, and mandatory training or retraining. Formal discipline is suspension, demotion, or dismissal.

(8) The PSO and the supervisor shall meet jointly with the HCC employee who inadvertently disclosed PHI within three (3) days of receipt of the written notification from the PSO to discuss the outcome of the investigation and to provide the employee with the informal disciplinary action.

(9) At a minimum, the supervisor shall take the following informal disciplinary action:

(a) give the HCC employee who inadvertently disclosed PHI inappropriately copies of the HSD HIPAA privacy policies and procedures with which the employee did not comply;

(b) require the employee to read the applicable HSD HIPAA privacy policies and procedures in the presence of the supervisor;

(c) explain to the employee the potential implications to HSD when PHI is disclosed inappropriately and is in conflict with HSD HIPAA privacy policies and procedures;

(d) answer any questions the employee has regarding the HSD HIPAA privacy policies and procedures; and

(e) require the employee to sign and date a document stating that counseling was provided regarding the failure to comply with HSD HIPAA privacy policies and procedures.

(10) The supervisor shall give the original document, signed and dated by the HCC employee, to the office of human resources, maintain a copy and immediately forward a copy to the PSO. Any written documentation of the informal discipline that is placed in the employee's HSD personnel file shall be copied and retained

the employee, and the employee may submit a written rebuttal for placement in the employee's personnel file in accordance with Subsection A of 1.7.1.12 NMAC.

(11) Upon receiving a copy of the document, the PSO shall enter "claim substantiated" along with the disciplinary action taken by the name of the HCC employee into the PSO database.

**D. Non-employee inappropriate disclosure of protected health information:** Appropriate disciplinary action may include requiring a corrective action plan with mandatory retraining, or severance of the working relationship with the HCC.

(1) The supervisor shall notify the PSO immediately upon becoming aware of an alleged or suspected inappropriate disclosure(s) of PHI by a non-employee member of the HCC workforce and shall conduct a privacy investigation within five (5) days of becoming aware of the situation.

(2) The supervisor shall notify the PSO of the results of the investigation (substantiated or not substantiated) and of the discipline that occurred (a corrective action plan with retraining or severed working relationship).

(3) The PSO shall enter into the PSO database the date and name of the non-employee member of the HCC workforce with the findings and action taken.] [RESERVED]  
[8.300.2.24 NMAC - N, 7-1-03; Repealed, 9-15-08]

**8.300.2.25 [RETALIATION PROHIBITED]:** HSD shall not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against eligible recipients or their personal representative for exercising their rights documented in the HSD notice of privacy practices or against whistleblowers [45 CFR 164.530 (g)]. [RESERVED]  
[8.300.2.25 NMAC - N, 7-1-03; Repealed, 9-15-08]

**8.300.2.26 [REQUIREMENT TO MAINTAIN DOCUMENTS]:**  
A. The PSO shall maintain originals of the following for six (6) years from the date of creation or from the date they were last in effect (whichever is later) [45 CFR 164.530 (j)]:

- (1) all HSD HIPAA privacy policies and procedures and attached forms;
- (2) the HSD notice of privacy practices, including all revisions made to such notice;
- (3) other HCC wide privacy forms;
- (4) HC employee disciplinary actions maintained in the PSO database as a result of improper disclosure of PHI;

(5) any PSO approved standard protocols; and

(6) valid authorizations.

B. The HCC shall maintain originals of the following for six (6) years from the date of creation:

(1) written recipient complaints regarding HSD HIPAA privacy practices and resolutions;

(2) written recipient requests to amend a medical record maintained in multiple locations and the written response to the requests;

(3) written recipient requests for restrictions on the disclosure of PHI and the written response to the requests;

(4) written requests to revoke a previously granted restriction on the disclosure of PHI, and the written response to the requests;

(5) written requests to revoke a previously granted authorization, and the written response to the requests; and

(6) written requests for access to view or to copy the HCC eligible recipient medical record maintained in multiple locations.

C. The HSD personnel office shall maintain originals of the following for six (6) years from the date of creation:

(1) privacy training records; and

(2) HSD employee disciplinary actions maintained in the employee's file as a result of improper disclosure of PHI.] [RESERVED]  
[8.300.2.26 NMAC - N, 7-1-03; Repealed, 9-15-08]

**8.300.2.27 [PRIVACY OFFICER]:** Human services department (HSD) shall have a HIPAA privacy and security officer (PSO) to administer and enforce the privacy policies and procedures as promulgated under the Health Insurance Portability and Accountability Act of 1996 [45 CFR 164.530 (a)]. [RESERVED]  
[8.300.2.27 NMAC - N, 7-1-03; Repealed, 9-15-08]

**8.300.2.28 [POLICIES AND PROCEDURES]:** HSD shall develop and promulgate policies and procedures relating to PHI that are designed to comply with the standards, implementation specifications, or other requirements of the HIPAA privacy rule. These policies and procedures shall be updated when the HIPAA privacy rule changes or significant HSD privacy practices change [45 CFR 164.530 (i)]. [RESERVED]  
[8.300.2.28 NMAC - N, 7-1-03; Repealed, 9-15-08]

## NEW MEXICO HUMAN SERVICES DEPARTMENT

### MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.300.11 NMAC, Sections 3, 5, 6, 8, 9, 10 and 11, effective September 15, 2008.

**8.300.11.3 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. Pamp. 1991).  
[8.300.2.3 NMAC - N, 7-1-03; A, 9-15-08]

**8.300.11.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.  
[2/1/95; 8.300.11.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 7/1/03; A, 9/15/08]

**8.300.11.6 OBJECTIVE:** The objective of these [regulations] rules is to provide [policies] instructions 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.  
[2/1/95; 8.300.11.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 7/1/03; A, 9/15/08]

**8.300.11.8 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.  
[2/1/95; 8.300.11.8 NMAC - Rn, 8 NMAC 4.MAD.002, 7/1/03; A, 9/15/08]

**8.300.11.9 CONFIDENTIALITY:** The following [applicant/recipient] applicant and eligible recipient information is confidential and is safeguarded by the human services department (HSD), all state agencies, their contractors and other [designees], authorized agents and all providers of [medicaid] MAD services. See 42 CFR 431.305(b) and 45 CFR 164.530(c):

- A. name, address and social security number;
- B. medical services furnished to the applicant and eligible recipient;
- C. social and economic conditions or circumstances;
- D. agency evaluation of

personal information;

E. medical data, including diagnosis and past history of disease or disability;

F. information received to verify income eligibility and the amount of medical payments, including information received from the social security administration and the internal revenue service;

G. information received in connection with the identification of legally liable third parties;

H. telephone numbers;

I. fax numbers;

J. electronic mail addresses;

K. medical record numbers;

L. health plan beneficiary numbers;

M. account numbers; and

N. certificate/license numbers.

[2/1/95; 4/30/97; 8.300.11.9 NMAC - Rn, 8 NMAC 4.MAD.030 & A, 7/1/03; A, 9/15/08]

**8.300.11.10 CONFIDENTIALITY OF APPLICANT/RECIPIENT INFORMATION:**

A. Safeguarding of confidential ~~[applicant/recipient]~~ applicant and eligible recipient information includes the methods of receiving, maintaining, and communicating individually identifiable health information. See 45 CFR Section 164.530(c).

B. **Confidentiality of medical information:** Confidential information regarding applicants or eligible recipients will be available to those identified in 8.300.11.9 NMAC for use only in connection with the administration of the New Mexico ~~[medicaid program (medicaid)]~~ medical assistance programs and only on a need-to-know basis. See 42 CFR Section 431.300-307. Those using confidential information will only use the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. See 45 CFR Section 164.502(b).

~~(+)~~ C. **Use of confidential medical information:** The following individuals have access to medical information:

~~(a)~~ employees of private firms, other divisions within HSD or other state agencies who are performing work or providing services for MAD under contract or business associate agreement or who are providing services, as required by federal law;

~~(b)~~ employees or agents of the federal department of health and human services; and

~~(c)~~ providers of health care services to ~~[medicaid]~~ eligible recipients.

~~(2) Sanctions for the improper~~

~~use of confidential information: Improper disclosure or use of confidential information by a MAD employee or designee is grounds for immediate dismissal, demotion or suspension (see 8.300.2.24 NMAC). Employees or designees are solely liable for all damages resulting from their improper use of confidential information.~~

[2/1/95; 4/30/97; 8.300.11.10 NMAC - Rn, 8 NMAC 4.MAD.031 & A, 7/1/03; A, 9/15/08]

**8.300.11.11 CONFIDENTIALITY OF ELECTRONIC DATA:**

A. **Electronic transmission/reception of confidential information:** To ensure that the confidential medical information of eligible recipients and applicants is kept confidential, transmission and reception of this information is limited to those individuals allowed to have access to medical information as stated in the use of confidential medical information policy (Paragraph (1) of Subsection B of 8.300.11.10 NMAC) and safeguarding protected health information policy 8.300.2.22 NMAC).

B. **Provider participation:** Providers who choose to send ~~[and/or]~~ or receive confidential medical information via fax must have a dedicated fax line ~~[and/or]~~ or fax machine. Confidential medical information should not be received at a commercial fax center where employees or customers may have access to the information. Providers who choose to send ~~[and/or]~~ or receive confidential medical information via fax or email must follow the minimum necessary standard. See 45 CFR Section 164.502.

C. **Responsibility for failure to follow ~~[policy]~~ rule:** Providers who fail to adhere to this ~~[policy]~~ rule are solely liable for any consequences resulting from the use of this method of transmitting confidential medical information, including any attorney fees, costs or damages. MAD shall mitigate any harmful effect from improper disclosure of individually identifiable health information in accordance with 45 CFR Section 164.530(f).

[2/1/95; R 5/31/97; Re-pr, 3/1/99; 8.300.11.11 NMAC - Rn, 8 NMAC 4.MAD.034 & A, 7/1/03; A, 9/15/08]

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

This is an amendment to 8.301.2 NMAC, Sections 3, 5, 6, 8 and 9, effective September 15, 2008.

**8.301.2.3 STATUTORY AUTHORITY:** The New Mexico medicaid program is administered pursuant to

regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended and by ~~[the state human services department pursuant to]~~ state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pamp. 1991).

[1-1-95; 8.301.2.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 3-1-06; A, 9-15-08]

**8.301.2.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.

[1-1-95, 2-1-95; 8.301.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 3-1-06; A, 9-15-08]

**8.301.2.6 OBJECTIVE:** The objective of these ~~[regulations]~~ rules 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.

[1-1-95, 2-1-95; 8.301.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 3-1-06; A, 9-15-08]

**8.301.2.8 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. [2-1-95; 8.301.2.8 NMAC - Rn, 8 NMAC 4.MAD.002, 3-1-06; A, 9-15-08]

**8.301.2.9 GENERAL PROGRAM DESCRIPTION:**

A. The New Mexico ~~[medicaid program (medicaid)]~~ MAD pays for medically necessary health care services furnished by medical providers who participate in medicaid. See 42 CFR 440.210; Section 27-2-16 NMSA 1978 (Repl. Pamp. 1991). ~~[Medicaid]~~ MAD covers a range of medical services, including acute care services, transportation, physician services, home health care, durable medical equipment and medical supplies, tot to teen health checks, pharmacy services, behavioral health services and institutional and community-based long-term care services.

B. ~~[Medicaid]~~ MAD covers services which are medically necessary for the diagnosis ~~[and/or]~~ or treatment of illnesses, injuries or conditions of ~~[recipients, as determined by the medical assistance division (MAD)]~~ an eligible recipient, as determined by the MAD or its designee. All services must be furnished within the limits of medicaid benefits, within the scope and practice of the provider as defined by state law and in accordance with applicable federal, state, and local laws and regulations. Any claim submitted to MAD for reimbursement is subject to review by MAD or



its designee to verify the medical necessity of the service.

[2-1-95; 8.301.2.9 NMAC - Rn, 8 NMAC 4.MAD.601 & A, 3-1-06; A, 9-15-08]

**NEW MEXICO  
HUMAN SERVICES  
DEPARTMENT**

**MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.302.1 NMAC, Sections 3, 5 through 22, effective September 15, 2008.

**8.302.1.3 STATUTORY AUTHORITY:** The New Mexico medical assistance program is administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act, as amended and by ~~[the state human services department pursuant to state statute. See NMSA 1978 27-2-12 et. seq.] state statute. See NMSA 1978 27-2-12 et. seq. (Repl. Pamp. 1991).~~

[1-1-95; 8.302.1.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 7-1-01; A, 9-15-08]

**8.302.1.5 EFFECTIVE DATE:** February 1, 1995, unless a late date is cited at the end of a section.

[1-1-95, 2-1-95; 8.302.1.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 7-1-01; A, 9-15-08]

**8.302.1.6 OBJECTIVE:** The objective of these ~~[regulations] rules~~ is to provide ~~[policies] instructions~~ 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.~~

[1-1-95, 2-1-95; 8.302.1.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 7-1-01; A, 9-15-08]

**8.302.1.7 DEFINITIONS:** **Medically necessary services**

A. Medically necessary services are clinical and rehabilitative physical ~~[-mental]~~ or behavioral health services that:

(1) are essential to prevent, diagnose or treat medical conditions or are essential to enable ~~[the individual] an eligible recipient~~ to attain, maintain or regain functional capacity;

(2) 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] eligible recipient;~~

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

(4) are required to meet the phys-

ical ~~[-mental]~~ and behavioral health needs of the ~~[individual] eligible recipient~~ and are not primarily for the convenience of the ~~[individual] eligible recipient,~~ the provider or the payer.

B. Application of the definition:

(1) 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, such a determination will be made by MAD or its designee.

(2) The department or its ~~[designee] authorized agent~~ making the determination of the medical necessity of clinical, rehabilitative and supportive services consistent with the ~~[medicaid] specific program's~~ benefit package applicable to an eligible ~~[individual] recipient~~ shall do so by:

(a) evaluating ~~[individual physical, mental,]~~ the eligible recipient's physical and behavioral health information provided by qualified professionals who have personally evaluated the ~~[individual] eligible recipient~~ within their scope of practice, who have taken into consideration the ~~[individual's] eligible recipient's~~ clinical history including the impact of previous treatment and service interventions and who have consulted with other qualified health care professionals with applicable specialty training, as appropriate;

(b) considering the views and choices of the ~~[individual or the individual's legal guardian, agent or surrogate decision maker] eligible recipient~~ or their personal representative regarding the proposed covered service as provided by the clinician or through independent verification of those views; and

(c) considering the services being provided concurrently by other service delivery systems.

(3) Physical ~~[-mental]~~ and behavioral health services shall not be denied solely because the ~~[individual] eligible recipient~~ has a poor prognosis. Required services may not be arbitrarily denied or reduced in amount, duration or scope to an otherwise eligible ~~[individual] recipient~~ solely because of the diagnosis, type of illness or condition.

(4) Decisions regarding MAD benefit coverage for ~~[children] eligible recipients~~ under 21 years of age shall be governed by the ~~[EPSDT] early periodic screening, diagnosis and treatment (EPSDT)~~ coverage rules.

(5) Medically necessary service requirements apply to all medical assistance program rules.

[8.302.1.7 NMAC - N, 12-1-03; A, 9-15-08]

**8.302.1.8 MISSION STATE-**

**MENT:** 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. [2-1-95; 8.302.1.8 NMAC - Rn, 8 NMAC 4.MAD.002, 7-1-01; A, 9-15-08]

**8.302.1.9 GENERAL PROVIDER POLICIES:** ~~[Medical services are reimbursed by the New Mexico medical assistance program (medicaid) under Title XIX of the Social Security Act, as amended. Direct health care services are provided by a variety of provider groups. This section describes general provider participation requirements eligible recipients, provider responsibilities, payment restrictions, and reporting and documentation requirements. Specific information by provider type is contained in subsequent sections of this manual.] Medically necessary services are reimbursed by the MAD under Title XIX of the Social Security Act as amended, or by state statute.~~

[2-1-95; 2-1-99; 8.302.1.9 NMAC - Rn, 8 NMAC 4.MAD.701, 7-1-01; A, 9-15-08]

**8.302.1.10 ELIGIBLE PROVIDERS:** ~~[Upon approval of a New Mexico medical assistance program provider participation application by the New Mexico medical assistance division (MAD), licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to Medicaid recipients. Providers must be enrolled as Medicaid providers before submitting a claim for payment to the MAD claims processing contractor. Once enrolled, providers receive and are responsible for maintenance of, a packet of information which includes Medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. To be eligible for medical reimbursement, providers are bound by MAD policies, procedures, billing instruction, reimbursement rates, and all audit, recoupment and withholding provisions unless superseded by federal law, federal regulation or by specific written approval by the MAD director.]~~

A. Upon the approval of a New Mexico MAD provider participation agreement by MAD or its designee, a licensed practitioner 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 websites, or in hard copy

format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billings instructions, utilization review instructions, and other pertinent materials. When enrolled, providers receive 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 requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules 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 and all applicable statutes, regulations and executive orders.

B. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

[2-1-95, 2-1-99; 8.302.1.10 NMAC - Rn, 8 NMAC 4.MAD.701.1, 7-1-01; A, 9-15-08]

### 8.302.1.11 PROVIDER RESPONSIBILITIES AND REQUIREMENTS:

[Providers who furnish services to medicaid recipients agree to comply with all federal and state laws and regulations relevant to the provision of medical services, including but not limited to, Title XIX of the Social Security Act, the Medicare and Medicaid Anti Fraud Act, the Health Insurance Portability and Accountability Act (HIPAA), and the state Medicaid Fraud Act. Providers also agree to conform to MAD policies and instructions as specified in this manual and its appendices, as updated.]

A provider who furnishes services to a medicaid eligible recipient agrees to comply with all federal and state laws, regulations, and executive orders relevant to the provision of services. A provider also must conform to MAD program rules 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. A provider must verify that individuals are eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that

are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient.

A. **Eligibility determination:** [Providers must verify that services they furnish are provided to eligible recipients.] A provider must verify recipient eligibility prior to providing services and verify that the recipient remains eligible throughout periods of continued or extended services.

(1) [Providers may verify eligibility through several mechanisms, including using an automated voice response system, contacting the medicaid fiscal agent contractor eligibility help desk, contracting with a medicaid eligibility verification system (MEVS) vendor, or contracting with a medicaid magnetic swipe card vendor. Providers must verify that recipients are eligible and remain eligible for medicaid throughout periods of continued or extended services. By verifying client eligibility, a provider is informed of restrictions that may apply to a recipient's eligibility.] A provider may verify eligibility through several mechanisms, including using the automated voice response system, contacting MAD or designated contractor eligibility help desks, contracting with an eligibility verification system vendor, or contracting with a magnetic swipe card vendor.

(2) [A recipient becomes financially responsible for a provider claim if the recipient fails to furnish identification before service and MAD denies payment because the resulting administrative error. Settlement of these claims is between the provider and recipient.] An eligible recipient becomes financially responsible for a provider claim if the eligible recipient:

(a) fails to identify himself as a MAD eligible recipient; or

(b) fails to state that an eligibility determination is pending; or

(c) fails to furnish MAD identification before the service is rendered and MAD denies payment because of the resulting inability of the provider to be able to file a claim timely; or

(d) receives services from a provider that lacks MAD enrollment is not eligible to provide the services or that the provider does not participate in MAD programs.

B. **Requirements for updating information:** [Providers] A provider must furnish MAD or the appropriate MAD claims processing contractor with complete information on changes in [their] his address, license, certification, board specialties, corporate name or corporate ownership, and a statement as to the continuing liability of the provider for any recoverable obligation to MAD which occurred or may have occurred prior to any sale, merger, consolidation, dissolution or

other disposition of the [health care] provider or person. MAD or the appropriate MAD claims processing contractor must receive this information at least 60 calendar days before the change. Any payment made by MAD based upon erroneous or outdated information is subject to recoupment or provider repayment. The provider must provide MAD with information, in writing, updating their provider participation agreement of any conviction of delineated criminal or civil offenses against the provider or parties with direct or indirect ownership or controlling interest within ten calendar days after the conviction.

C. **Additional requirements:** [Providers] A provider must meet all other requirements stated in this manual, the billing instructions, manual revisions, supplements, and signed application forms or re-verification forms, as updated. MAD may require a letter of credit, a surety bond, or a combination thereof, from the [health care] provider. The letter of credit, surety bond or combination thereof may be required if any one of the following conditions is met:

(1) the [health care] provider is the subject of a state or federal sanction or of a criminal, civil, or departmental proceeding in any state;

(2) a letter of credit, surety bond, or any combination thereof is required for each [health care provider in that category of health care provider; or] provider of a designated provider type;

(3) the [health care] provider cannot reasonably demonstrate that they have assumed liability and are responsible for paying the amount of any outstanding recoveries to MAD as the result of any sale, merger, consolidation, dissolution, or other disposition of the [health care] provider or person; or

(4) the secretary determines that it is in the best interest of [the medical assistance programs] MAD to do so, specifying the reasons.

[2-1-95, 2-1-99; 8.302.1.11 NMAC - Rn, 8 NMAC 4.MAD.701.2 & A, 7-1-01; A, 7-1-03; A, 9-15-08]

**8.302.1.12 ELIGIBLE MEDICAID RECIPIENTS:** To comply with Title XIX of the Social Security Act, as amended, [medicaid] MAD is required to serve certain groups of eligible recipients and has the option of paying for [medical] services provided to other eligible recipient groups [42 CFR 435.1]. [Medicaid] MAD is also required to pay for emergency services furnished to undocumented aliens residing in New Mexico who are not lawfully admitted for permanent residence but who otherwise meet the eligibility requirements [for medicaid]. Coverage is restricted to those services necessary to treat an emergency med-

ical condition, which includes labor and delivery services. See 8.325.10.3 NMAC.

A. **Recipient eligibility determination:** To be eligible to receive ~~medicaid benefits, applicants/recipients~~ MAD benefits, an applicant/recipient must meet general eligibility ~~and/or~~ or resource and income requirements. These requirements vary by category of eligibility and may vary between health care programs. See 8.200 NMAC for information on medicaid eligibility requirements.

(1) ~~Individuals who are~~ An otherwise eligible recipient who is under the jurisdiction or control of the correctional system or resides in a ~~public institutions are~~ public institution is not eligible for medicaid.

(2) MAD eligibility determinations are made by the following agencies:

(a) the staff of the income support division (ISD) county offices determines eligibility for aid to families with dependent children, pregnant women and children and other general ~~medicaid~~ MAD categories;

(b) the staff of the New Mexico children, youth and families department (CYFD) determines eligibility for child protective services, adoptive services and foster care children;

(c) the staff of the social security administration determines eligibility for social security income (SSI); and

(d) the staff of a federally qualified health ~~centers,~~ center, a maternal and child health services block grant program ~~or,~~ the Indian health ~~services,~~ service, and other designated agents make presumptive eligibility determinations ~~for pregnant women~~.

B. **Recipient freedom of choice:** ~~Eligible recipients have the freedom of choice to obtain medical services from in state providers who meet the requirements for participation in medicaid. Some restrictions to this freedom of choice apply to recipients who are assigned provider(s) in the medical management program [42 CFR 431.54(e)]. See 8.301.5 NMAC, MEDICAL MANAGEMENT. Some restrictions to this freedom of choice may also apply to purchases of medical devices, and laboratory and radiology tests [42 CFR 431.54 (d)]. Unless otherwise restricted by specific health care program rules, an eligible recipient has the freedom of choice to obtain services from in-state and border providers who meet the requirements for MAD provider participation. Some restrictions to this freedom of choice apply to an eligible recipient who is assigned to a provider or providers in the medical management program [45 CFR 431.54 (e)]. See 301.5 NMAC, Medical Management. Some restrictions to this freedom of choice may also apply to pur-~~

~~chases of medical devices, and laboratory and radiology tests and other services and items as allowed by federal law [42 CFR 431.54 (d)].~~

C. **Recipient identification:** ~~Medicaid clients receive a medicaid card. The card must be presented by or on behalf of the individual recipient or family members before receiving medical services, or with each visit in the case of continued or extended services.] An eligible recipient must present all health program identification cards or other eligibility documentation before receiving services and with each case of continued or extended services.~~

(1) ~~Providers should~~ A provider must verify the eligibility of the ~~client~~ recipient to assure the ~~client~~ recipient is eligible on the date the services are provided. Verification of eligibility also permits the provider to be informed of any restrictions or limitations on services associated with the ~~client's~~ recipient's eligibility; of the applicability of co-payments on services; of the need for the ~~client's~~ eligible recipient's care to be coordinated with or provided through a Salud!, ~~medicaid~~ managed care organization, a hospice provider, a PACE provider, a medical management provider, or similar health care ~~plans or providers~~ plan or provider. Additionally, information on medicare eligibility and other insurance coverage may be provided.

(2) ~~Recipients whose medicaid coverage may be limited include qualified medicare beneficiary (QMB) recipients, and recipients entitled to receive pregnancy only benefits or family planning benefits.] An eligible recipient whose health care program coverage or benefits may be limited include:~~

(a) qualified medicare beneficiary (QMB) recipient; and

(b) recipient entitled to receive only pregnancy-related benefits or family planning benefits.

[2-1-95; 2-1-99; 8.302.1.12 NMAC - Rn, 8 NMAC 4.MAD.701.3 & A, 7-1-01; A, 9-15-08]

**8.302.1.13 PATIENT SELF DETERMINATION ACT:** ~~Medicaid certified hospitals, nursing facilities, intermediate care facilities for the mentally retarded, hospice agencies, and home health agencies are required to give patients information about their right to make their own health decisions, including the right to accept or refuse medical treatment, pursuant to the Omnibus Budget Reconciliation Act (OBRA) of 1990. Individuals are] A hospital, nursing facility, intermediate care facility for the mentally retarded, hospice agency and home health agency is required to give an eligible recipient or personal representative information about his right to~~

~~make his own health decisions, including the right to accept or refuse medical treatment, pursuant to the Omnibus Budget Reconciliation Act (OBRA) of 1990. An eligible recipient is not required by this legislation to execute advance directives. Advance directives, such as living wills or durable power of attorney documents, must be established in a manner which is recognized under New Mexico state law. See applicable state law. A health care [providers] provider cannot object on the basis of conscience when [a recipient] an eligible recipient or personal representative wishes to implement an advance directive. [However, providers may decline to participate in the care if the recipient's case is transferred to other qualified physicians.]~~

A. **Information requirements:** ~~Providers are required to provide written information to all adults concerning their right to do the following at the time of admission:] At the time of admission, a provider is required to provide written information to an adult eligible recipient or personal representative concerning his right to do the following:~~

(1) make decisions about ~~their~~ his medical care;

(2) accept or refuse medical or surgical treatment;

(3) execute advance directives;

(4) execute ~~their~~ his rights under HIPAA; and

(5) ~~if recipients who are already incapacitated are admitted, providers must provide recipients' families or authorized representatives with this information. If recipients are no longer incapacitated, providers must discuss these rights with recipients.] if an eligible recipient who is already incapacitated is admitted, the provider must provide their personal representatives with this information; if an eligible recipient is no longer incapacitated, the provider must discuss these rights with the eligible recipient.~~

B. **Policies, rules and procedures:** ~~Providers must give written information to all recipients over eighteen (18) years of age about provider policy and procedures concerning advance directives rights. Providers] A provider must give written information to an eligible adult recipient or their personal representative about provider rules and procedures concerning advance directive rights. A provider must verify that the advance directive complies with state law.~~

C. **Documentation requirements:** ~~Providers must document in each recipient's medical record whether he/she has established an advance directive. If the recipient or his/her family or representative presents an advanced directive, providers must comply with the terms of the~~

document, as directed by law. If recipients are incapacitated, unable to communicate, or family members or representatives do not present an advance directive, providers must document that recipients were unable to receive information or communicate whether advance directives exist. Providers must inform recipients that it furnishes information and proper forms for completion of advance directives.] A provider must document in each eligible recipient's medical record whether he or their personal representative has established an advance directive. If the eligible recipient or their personal representative presents an advanced directive, a provider must comply with the terms of the document, as directed by state law. If an eligible recipient is incapacitated, unable to communicate, or their personal representative does not present an advance directive, the provider must document that the eligible recipient was unable to receive information or communicate whether advance directives exist. A provider must inform the eligible recipient or their personal representative that it furnishes information and proper forms for completion of advance directives.

**D. Provision of care:** [Providers] A provider must not condition the provision of care or discriminate against [a recipient] an eligible recipient based on whether [he/she] he has established advance directives. If [a recipient] an eligible recipient is entitled to necessary care ordered by a physician, which providers under normal procedures must furnish, care cannot be delayed while waiting for the execution of an advance directive. Once the existence of an advance directive is documented, the directive takes precedence over normal procedures.

**E. Changing the advanced directives:** [Providers] A provider must inform [a recipient that he/she] an eligible recipient or their personal representative that he has a right to reaffirm an advance directive or change an advance directive at any time and in any manner, including oral statements. [2-1-95; 2-1-99; 8.302.1.13 NMAC - Rn, 8 NMAC 4.MAD.701.4, 7-1-01; A, 7-1-03; A, 9-15-08]

**8.302.1.14 NONDISCRIMINATION:** [Providers must furnish covered services to recipients in the same scope, quality and manner as provided to the general public. Within the limits of Medicaid, providers may not discriminate on the basis of age, race, religion, color, sex, handicap, national origin, marital status, political beliefs, or source of payment.] A provider must furnish covered services to an eligible recipient in the same scope, quality and manner as provided to the general public. Within the limits of medical assistance pro-

grams, a provider may not discriminate on the basis of race, color, national origin, sex, gender, age, ethnicity, religion, sexual orientation, sexual preference, health status, disability, marital status, political belief, or source of payment. [45 CFR 80.3 (a)(b); 45 CFR 84.52 (a); 42 CFR 447.20; and PL 101-366, 104 Stat. 327 (1990)]. [2-1-95; 2-1-99; 8.302.1.14 NMAC - Rn, 8 NMAC 4.MAD.701.5, 7-1-01; A, 9-15-08]

#### **8.302.1.15 BILLING AND CLAIMS PROCESSING:**

Reimbursement to [providers] a provider for services or procedures is based on the MAD reimbursement fee schedule, reimbursement rate, or reimbursement methodology in place at the time the services were furnished by the provider. [Providers who furnish services to Medicaid recipients agree to accept the amount paid by MAD as payment in full.] A provider who furnishes services to an eligible recipient agrees to accept the amount paid by MAD as payment in full, except as otherwise allowed by rule or regulation [42 CFR 447.15].

**A. Requirements for reimbursement:** [Providers are] A provider is reimbursed for performing a service or procedure only if any required prior [approval, documentation, or acknowledgement] authorization, documentation, certifications, or acknowledgements are submitted with the claim and the claim is received by the appropriate claims processing contractor within the filing limits.

~~**B. Responsibility for claims:** Providers are responsible for all claims submitted under his/her Medicaid provider number.~~

~~**C. No billing of recipients or third parties:** With the exception of WDI and SCHIP copayments as defined in 8.243.600.9 NMAC, providers may not bill or accept payment from recipients or other third parties determined to be legally responsible for the balance of a claim. Following Medicaid payment, providers cannot seek additional payment from a recipient or other legally responsible party in addition to the amount paid by Medicaid.]~~

**B. Electronic billing requirements:** Effective December 1, 2008, electronic billing of claims is mandatory unless an exemption has been allowed by MAD. Electronic billing improves the accuracy of claims submission and payment; provides consistency in billing information; and improves the speed of payment. Exemptions will be given on a case by case basis with consideration given to barriers the provider may face in billing electronically, including when volumes are so small that developing electronic submission capability is impractical. The requirement for

electronic submission of claims does not apply to situations for which paper attachments must accompany the claim form.

**C. Responsibility for claims:** A provider is responsible for all claims submitted under his national provider identifier (NPI) or other provider number including responsibility for accurate coding that represents the services provided without inappropriately upcoding, unbundling, or billing mutually exclusive codes as indicated by published coding manuals, directives, the CMS correct coding initiative, and provider rules manual.

**D. No billing of recipients or third parties:** With the exception of WDI and SCHIP or other specified program co-payments or cost-sharing, a provider may not bill, turn over to collection, or accept payment from an eligible recipient, their personal representative or other third parties determined to be legally responsible for the balance of a claim except as specifically allowed by MAD regulations. Following MAD payment, a provider cannot seek additional payment from an eligible recipient or their personal representative in addition to the amount paid by MAD. Following MAD denial of payment due to provider administrative error in filing a claim, a provider cannot seek payment from an eligible recipient or their personal representative or turn the balance over to collection. See 8.302.3 NMAC, *Third Party Liability Provider Responsibilities*.

[2-1-95; 2-1-99; 8.302.1.15 NMAC - Rn, 8 NMAC 4.MAD.701.6, 7-1-01; A, 1-1-02; A, 9-15-08]

**8.302.1.16 ACCEPTANCE OF RECIPIENT OR THIRD PARTY PAYMENTS:** [Providers may bill recipients] A provider may only bill an eligible recipient or accept payment for services if all of the following requirements are satisfied:

**A.** [Recipients are] The eligible recipient is advised by the provider before services are furnished that a particular service is not covered by [Medicaid] MAD or that the particular provider does not accept patients whose medical services are paid for by [Medicaid] MAD.

~~**B.** [Recipients are provided with information by providers about the necessity, options, charges for service, and the option of going to a provider who furnishes services to Medicaid recipients; and~~

~~**C.** Recipients agree in writing to have specific services provided with knowledge that they are financially responsible for payment. The provider may bill the recipient, if an administrative error resulting in MAD's denial of payment was caused by the failure of the recipient to furnish identification before receiving services.]~~

**B.** The eligible recipient is provided with information by the provider regarding the necessity, options, and charges for the service, and of the option of going to a provider who accepts MAD payment.

**C.** The eligible recipient still agrees in writing to have specific services provided with the knowledge that he will be financially responsible for payment. [2-1-95; 2-1-99; 8.302.1.16 NMAC - Rn, 8 NMAC 4.MAD.701.7, 7-1-01; A, 9-15-08]

**8.302.1.17 RECORD KEEPING AND DOCUMENTATION REQUIREMENTS:** [Providers] A provider must maintain all the records necessary to fully disclose the nature, quality, amount and medical necessity of services furnished to [recipients who are] an eligible recipient who is currently receiving or who [have received medical] has received services in the past. [42 CFR 431.107(b)]. Services billed to MAD not substantiated in the eligible recipient's records are subject to recoupment. Failure to maintain records for the required time period is a violation of the Medicaid Provider Act. NMSA 1978 section 27-11-1, et. seq., and a crime punishable under the Medicaid Fraud Act, NMSA, section 30.44-5. See 8.351.2 NMAC, *Sanctions and Remedies*.

**A. Detail required in records:** Provider records must be sufficiently detailed to substantiate the date, time, eligible recipient name, [servicing provider, level of services,] rendering, attending, ordering or prescribing provider; level and quantity of services; length of a session of service billed, diagnosis and medical necessity of any service.

(1) When codes, such as the international classification of disease (ICD) or current procedural terminology (CPT), are used as the basis for reimbursement, provider records must be sufficiently detailed to substantiate the codes used on the claim form.

(2) Treatment plans or other plans of care must be sufficiently detailed to substantiate the level of need, supervision, and direction and service(s) needed by the eligible recipient.

**B. Documentation of test results:** Results of tests and services must be documented, which includes results of laboratory and radiology procedures or progress following therapy or treatment.

**C. Services billed by units of time:** Services billed on the basis of time units spent with [recipients must be] an eligible recipient must be sufficiently detailed to document the actual time spent with [recipients] the eligible recipient and the services provided during that time unit.

**D. Recipient funds accounting systems:** If [a recipient] an eli-

gible recipient entrusts [his/her] his personal funds to a nursing facility, intermediate care facility for the mentally retarded, or swing bed hospital, [facility providers] or any other facility, the facility provider must establish and maintain an acceptable system of accounting. See 42 CFR 445.22.

**E. Record retention:** [Providers who receive] A provider who receives payment for treatment, services, or goods [from MAD] must retain all medical and business records relating to any of the following for a period of at least [five (5) years] six years from the payment date:

(1) treatment or care of any eligible recipient;

(2) services or goods provided to any eligible recipient;

(3) amounts paid by MAD on behalf of any eligible recipient; and

(4) any records required by MAD for the administration of Medicaid.

~~[(5) failure to maintain records for the required time period is a crime punishable by fine. [NMSA 1978 30.44-5 (Repl. Pamp. 1989)]~~

[2-1-95; 2-1-99; 8.302.1.17 NMAC - Rn, 8 NMAC 4.MAD.701.8, 7-1-01; A, 9-15-08]

**8.302.1.18 PATIENT CONFIDENTIALITY:** [Providers are] A provider is required to comply with the HIPAA privacy regulations. Confidential medical information regarding Medicaid [applicants/recipients] information on the applicant or eligible recipient must be released by providers to MAD, and to other state[?] or federal agencies, or their employees at no cost when:

A. the agency is involved in the administration of Medicaid;

B. the information is to be used to establish eligibility, determine the amount of assistance or provide services related to Medicaid;

C. the agency is subject to the same standards of confidentiality as MAD; and

~~[D. the agency has the actual consent of applicants or recipients for release of the information; and~~

~~E.] D. [consent is obtained when a recipient] the agency has the actual consent of applicant or eligible recipient or their personal representative for release of the information, or consent is obtained when an eligible recipient or their personal representative or a member of the assistance group makes application for benefits or services with the human services department.~~

[2-1-95; 2-1-99; 8.302.1.18 NMAC - Rn, 8 NMAC 4.MAD.701.9, 7-1-01; A, 7-1-03; A, 9-15-08]

**8.302.1.19 PROVIDER DISCLOSURE:** [Providers] A provider must

furnish MAD with the following information. See 42 CFR 431.107(b)(2)(3): [4] name and address of each person with an ownership or controlling interest in the entity or in any subcontractor in which the entity has a direct or indirect ownership interest totaling five percent (5%) or more, and any relationship (spouse, child or sibling) of these persons to another; [2] name of any other entity in which a person with an ownership or controlling interest in the disclosing entity also has an ownership or controlling interest; [3] name of any person with an ownership or controlling interest in the entity who has been convicted of a criminal offense related to that person's involvement in any program established under the Medicare or [Medicaid] medical assistance programs; and [4] name of any provider who employs or uses the services of an individual who, at any time during the year preceding this employment, was employed in a managerial, accounting, auditing or similar capacity, by an agency or organization which currently serves or at any time during the preceding year served as a Medicare or [Medicaid] MAD fiscal intermediary or carrier for the provider. A provider must notify MAD of any change in the status of these disclosure provisions.

**A. Reports furnished by providers:** [Providers] A provider must give MAD, the appropriate MAD claims processing contractor, MAD audit contractor, MAD utilization review contractor or MAD designated representative financial reports, audits, certified cost statements, medical and other records, or any other data needed to establish a basis for reimbursement at no cost.

(1) All information regarding any claim for services must be provided. See 42 CFR 431.107(b) (2).

(2) Required cost statements must be furnished no later than ~~[ninety (90)] 150~~ calendar days of the close of the provider's fiscal accounting period.

(3) ~~[Medicaid] MAD~~ records and other documentation needed by MAD or its designee must be available within a defined period, upon request.

**B. Penalties:** MAD suspends payment for services until the required statements are furnished by [providers] the provider.

**C. Conflict of interest:** MAD does not enter into a provider participation agreement or other contract with a public officer, employee of the state, legislator, or business in which the individual has a substantial interest, unless the individual discloses his/her substantial interest and [the] provider participation agreement is accepted by MAD and any other contract is awarded pursuant to the state procurement code [NMSA 10-16-7 (Repl. Pamp. 1993)]. [2-1-95; 2-1-99; 8.302.1.19 NMAC - Rn, 8

NMAC 4.MAD.701.10, 7-1-01; A, 9-15-08]

### 8.302.1.20 TERMINATION OF PROVIDER STATUS:

A. Provider status may be terminated if the provider or MAD gives the other written notice of termination at least ~~[thirty (30)]~~ 60 calendar days before the effective termination date.

(1) Facility provider must also give at least ~~[fifteen (15)]~~ 15 calendar days notice to the public by publishing a statement of the date services are no longer available at the facility in one or more newspapers of general circulation within the affected county or region.

(2) Normal termination and notice limits do not apply if the state survey agency or health care financing administration determines that the health and safety of residents in a nursing ~~[facilities]~~ facility or intermediate care ~~[facilities]~~ facility for the mentally retarded or the children, youth and families department determines that the health and safety of children or adolescents in a residential treatment ~~[centers]~~ center, group ~~[homes]~~ home, or treatment foster care are in jeopardy.

B. **Grounds for denial or revocation of enrollment:** ~~[The medical assistance division may deny or revoke enrollment in its medical assistance programs.]~~ MAD may, with a 30-calendar days notice, deny or terminate a provider's enrollment in its medical assistance program including, but not limited to, medicaid (Title XIX of the Social Security Act) and other health insurance programs funded by the department, if any of the following are found to be applicable to the health care provider, his agent, a managing employee, or any person having an ownership interest equal to five ~~(5)~~ percent or greater in the health care provider:

(1) misrepresentation by commission or omission of any information on the MAD provider participation agreement enrollment form;

(2) previous or current exclusion, suspension, termination from, or the involuntary withdrawal from participation in New Mexico medical assistance programs, any other states medicaid program, medicare, or any other public or private health or health insurance program;

(3) conviction under federal or state law of a criminal offense relating to the delivery of any goods, services, or supplies, including the performance of management or administrative services relating to the delivery of the goods, services, or supplies, under New Mexico medical assistance programs any other states medicaid program, medicare, or any other public or private health or health insurance program;

(4) conviction under federal or state law of a criminal offense relating to

the neglect, or abuse of a patient in connection with the delivery of any goods, services, or supplies;

(5) conviction under federal or state law of a criminal offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance;

(6) conviction under federal or state law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;

(7) conviction under federal or state law of a criminal offense punishable by imprisonment of a year or more which involved moral turpitude, or acts against the elderly, children, or infirmed;

(8) conviction under federal or state law of a criminal offense in connection with the interference or obstruction of any investigation into any criminal offense listed in Paragraphs (3) through (9) of this subsection;

(9) sanction pursuant to a violation of federal or state laws or rules relative to New Mexico medical assistance programs, any other states medicaid program, medicare, or any other public health care or health insurance program;

(10) violation of licensing or certification conditions or professional standards relating to the licensure or certification of health care providers or the required quality of goods, services, or supplies provided;

(11) failure to pay recovery properly assessed or pursuant to an approved repayment schedule under New Mexico medical assistance programs; and

(12) see 8.351.2 NMAC, *Sanctions And Remedies*, and 8.353.2 NMAC, *Provider Hearings*.

[2-1-95, 2-1-99; 8.302.1.20 NMAC - Rn, 8 NMAC 4.MAD.701.11, 7-1-01; A, 9-15-08]

### 8.302.1.21 CHANGE IN OWNERSHIP:

As soon as possible, ~~[and not less than thirty (30)]~~ but at least 60 calendar days after a change in ownership, MAD reserves the right to withhold payment on all pending or current claims until any right MAD has to recoup portions or all of those payments is determined. Payment will not be withheld if MAD received written confirmation that the new owner or previous ~~[medicaid]~~ medical assistance program provider agrees to be responsible for any potential ~~[recoupment]~~ overpayment.

[2-1-95; 2-1-99; 8.302.1.21 NMAC - Rn, 8 NMAC 4.MAD.701.12, 7-1-01; A, 9-15-08]

### 8.302.1.22 PUBLIC DISCLOSURE OF SURVEY INFORMATION:

The findings of a ~~[medicaid]~~ MAD survey used to determine the ability of facility ~~[providers]~~ provider to begin or continue as

medicaid participating ~~[providers are]~~ provider is available to the public within ~~[ninety (90)]~~ 90 calendar days of completion.

A. **Documents subject to disclosure:** Documents subject to public disclosure include:

(1) current survey reports prepared by the survey agency;

(2) official agency notifications of findings based on these reports, including statements of deficiencies;

(3) pertinent parts of written statements furnished by providers to the survey agency related to these reports and findings, including any corrective action taken or planned; and

(4) information regarding the ownership of nursing ~~[facilities]~~ facility. See 42 CFR 455.104(a).

B. **Release of performance reports:** Reports on ~~[providers' or contractors']~~ provider's or contractor's performance reviews and formal performance evaluations are not available to the public until ~~[providers or contractors]~~ the provider or contractor have a reasonable opportunity (not to exceed 30 calendar days) to review the reports and offer comments. These comments become part of the reports.

C. **Availability of cost reports:** Provider cost reports used as a basis for reimbursement are available to the public upon receipt of a written request by the MAD audit contractor.

(1) Information disclosure is limited to cost report documents required by social security administration regulations, and in the case of a settled cost report, the notice of medicaid settlement.

(2) The request for information must identify the provider and the specific reports requested.

(3) The cost for supplying copies of the cost reports is billed to the requester. [2-1-95; 2-1-99; 8.302.1.22 NMAC - Rn, 8 NMAC 4.MAD.701.13, 7-1-01; A, 9-15-08]

## NEW MEXICO MINING SAFETY BOARD

### TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 6 MINE SAFETY PART 4 CERTIFICATION OF COAL MINE OFFICIALS

19.6.4.1 **ISSUING AGENCY:** New Mexico Mining Safety Board. [19.6.4.1 NMAC - N, 09/30/08]

19.6.4.2 **SCOPE:** All persons subject to NMSA 1978, Article 14, Qualifications and Duties of Coal Mine Officials. [19.6.4.2 NMAC - N, 09/30/08]

**19.6.4.3 STATUTORY**

**AUTHORITY:** NMSA 1978, Section 69-5-1 et seq, Section 69-8-1 et seq and Section 69-14-1 et seq.

[19.6.4.3 NMAC - N, 09/30/08]

**19.6.4.4 DURATION:**

Permanent.

[19.6.4.4 NMAC - N, 09/30/08]

**19.6.4.5 EFFECTIVE DATE:**

September 30, 2008, unless a later date is cited at the end of a section.

[19.6.4.5 NMAC - N, 09/30/08]

**19.6.4.6 OBJECTIVE:**

The objective of Part 4 of 19.6 NMAC is to establish rules pertaining to the certification of coal mine officials. Officials include, but are not limited to, mine examiners, underground mine foreman and surface mine foreman. Officials must obtain certification from the state mine inspector as required in NMSA 1978 69-14-1. NMSA Chapter 69, Article 14 also requires certain qualifications, that testing must be conducted, requires recertification and lists discipline procedures.

[19.6.4.6 NMAC - N, 09/30/08]

**19.6.4.7 DEFINITIONS:**

**A.** "Certificate" means a document issued by the state mine inspector, or certifying agency from another state, allowing the holder to be employed as a coal mine official in the state of origin.

**B.** "Mining engineering graduate" means a person having a B.S. degree in mining or mineral engineering from an accredited college or university.

**C.** "Official" means coal mine official, including underground mine foreman, mine examiner or surface mine foreman.

[19.6.4.7 NMAC - N, 09/30/08]

**19.6.4.8 REQUIREMENT FOR CERTIFICATION BY STATE MINE INSPECTOR:**

The state mine inspector shall certify, recertify or discipline persons to act as mine foremen and mine examiners. No mine operator shall employ any person as underground mine foreman, mine examiner or surface mine foreman unless that person has been certified by the state mine inspector for such position.

[19.6.4.8 NMAC - N, 09/30/08]

**19.6.4.9 METHODS AND REQUIREMENTS OF CERTIFICATION:**

**A.** The state mine inspector may recognize the foreman's or mine examiner's certificate issued by another state and issue certificates accordingly when:

(1) the state mine inspector reviews the certification requirements of another state and determines that the requirements are equivalent or more stringent than New Mexico's, and are pertinent to the mining conditions found in New Mexico's coal mines; or

(2) an agreement of reciprocity is signed between the state mine inspector and the director of the certification agency from another state.

**B.** Persons with four or more years of experience in or about underground coal mines, and providing underground foreman certification from another state program or persons with four or more years of experience in or about surface coal mines, and providing surface foreman certification from another state program, meet the requirements for testing.

**C.** The state mine inspector shall hold written examinations, at times, dates and places to be given out at least sixty days in advance, to all persons desiring to secure mine foreman certificates or mine examiner certificates.

**D.** The state mine inspector shall require that any applicant for examination to the position of mine foreman or mine examiner submit a completed application at least thirty days prior to the examination date and shall meet the experience requirements of this section. Every person desiring to secure an underground mine foreman's certificate and not already in such position or not holding such certificate from another state shall first serve as a mine examiner for six months and shall have at least four years of underground coal mine experience to participate in the underground foreman's examination. Every person desiring to secure a surface mine foreman's certificate, and not already holding such certificate from another state, shall have at least four years of surface coal mine experience to participate in the surface foreman's examination. A person who holds a certificate for surface mine foreman who wishes to take the underground foreman test must have a minimum of four years of experience in underground mine workings. A person who holds an underground mine foreman certificate and who wishes to participate in the surface mine foreman examination must have at least two years of surface mine experience. Every person desiring to secure a mine examiner's certificate and not already in such position or not holding such certificate from another state recognized by the state mine inspector, shall have at least two years of coal mine experience to participate in the underground mine examiner's examination.

**E.** The state mine inspector may allow a mining engineering graduate to participate in the foreman's or exam-

iner's examination if the mining engineering graduate meets at least one-half of the experience requirements listed in Subsections B and D of this section and a mining engineering graduate must pass the underground mine examiner's examination and shall first serve as an underground mine examiner for six months prior to taking the underground mine foreman examination.

[19.6.4.9 NMAC - N, 09/30/08]

**19.6.4.10 FEES FOR CERTIFICATION AND EXAMINATION:**

The state mine inspector, after consultation with the mining safety board, may impose fees for examination and certification of officials. Current fees will be posted with examination notice given out as required in Subsection C of 19.6.4.9 NMAC.

[19.6.4.10 NMAC - N, 09/30/08]

**19.6.4.11 CERTIFICATION PERIOD AND RECERTIFICATION PROCESS:**

**A.** Certification of officials shall be issued for a period of five years. All officials certified by the state mine inspector prior to June 15, 2007 shall have their certification period extended five years. Each official is required to have retraining as a qualified/certified person on an annual basis from the mine in which they are employed as required in 30 CFR 75.160, 30 CFR 75.16 and 30 CFR 77.107. Failure to have re-training as a qualified/certified person on an annual basis may result in suspension of certification.

**B.** Each official has the responsibility to notify the state mine inspector of any change in address or change in mine employment within thirty days of such change. Failure to provide current contact information may result in suspension of certification.

**C.** Certified persons may apply for recertification within twelve months prior to the end of the certification period. Every certification shall automatically expire on the last day of the certification period if the official has not recertified prior to that date. Recertification will require the applicant to submit an application and appropriate documentation as required by the state mine inspector at least thirty days prior to the testing date.

**D.** Recertification may be done by taking an exam every five years, prior to certification expiration, or an organization may submit an alternative plan for the inspector's approval as follows:

(1) officials taking an exam every five years will follow the same process required for original certification; or

(2) an organization may submit an alternative plan, for the state mine inspector's approval; the alternative plan may be

carried out over the five year period; the alternative plan shall include the subjects to be covered, the minimum amount of time per subject, the methods of instruction, and the methods of participant evaluation during process completion; following completion, the applicant shall provide the state mine inspector with verification that all training for the recertification period is current; and

(3) applicants shall submit an application, pay the applicable fee, and provide all appropriate documentation as required by the state mine inspector, before receiving recertification.

E. Mine examiners may fulfill the recertification testing requirements by successfully completing the examination for mine foreman certification or recertification.

[19.6.4.11 NMAC - N, 09/30/08]

**HISTORY of 19.6.4 NMAC:** [RESERVED]

## NEW MEXICO MINING SAFETY BOARD

### Notice of Renumbering

Because of approved NMAC restructuring, the following rule renumbering will be effective on September 30, 2008.

11.8.3 NMAC, Mine Safety for Underground Workers (filed 12/12/2006) will be renumbered to 19.6.3 NMAC, Mine Safety for Underground Workers.

19.7.20 NMAC, New Mexico Mine Safety Code for all Mines Including Open-Cut and Open-Pit (filed 4/8/2008) will be renumbered to 19.6.5 NMAC, New Mexico Mine Safety Code for all Mines Including Open-Cut and Open-Pit.

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## NEW MEXICO MINING SAFETY BOARD

This is an amendment to 19.6.2 NMAC Sections 1, 2, 7, 8 and 11. This is also a renumber from 11.8.2 NMAC to 19.6.2 NMAC, effective 9/30/08.

~~[TITLE 11- LABOR AND WORKERS' COMPENSATION  
CHAPTER 8 MINE SAFETY]~~  
TITLE 19 NATURAL RESOURCES AND WILDLIFE  
CHAPTER 6 MINE SAFETY  
PART 2 EMERGENCY NOTIFICATION

**19.6.2.1 ISSUING AGENCY:** [~~New Mexico State Mine Inspector~~] New Mexico Mining Safety Board.  
[N, 08/31/06; 19.6.2.1 NMAC - Rn, 11.8.2.1 NMAC & A, 9/30/08]

**19.6.2.2 SCOPE:** All persons subject to NMSA 1978, Section 69-5-1 et seq and Sections 69-8-1 et seq. and all mines as defined in NMSA 1978, Section 69-8-2.D.  
[N, 08/31/06; 19.6.2.2 NMAC - Rn, 11.8.2.2 NMAC & A, 9/30/08]

**19.6.2.7 DEFINITIONS:** [~~As used in this part, "accident" has the meaning provided in Title 30 Code of Federal Regulations 50.2.~~]

**A.** "Accident" means accident as defined in Title 30 CFR 50.2(h).

**B.** "CFR" means Code of Federal Regulations.

**C.** "Mine" means mine as defined in Title 30 CFR 50.2(a).

[N, 08/31/06; 19.6.2.7 NMAC - Rn, 11.8.2.7 NMAC & A, 9/30/08]

**19.6.2.8 REQUIREMENT TO FILE EMERGENCY NOTIFICATION PLAN:**

**A.** All operators of existing mines must prepare an emergency notification plan and submit the plan to the state mine inspector for approval by April 10, 2006. All operators of new or reopened mines shall submit an emergency notification plan to the state mine inspector prior to opening or reopening the mine.

**B.** Each emergency notification plan must contain procedures for notifying the state mine inspector within thirty minutes of an accident.

**C.** Any changes made by a mine operator to an approved emergency notification plan shall be [~~submitted~~] submitted by the operator, within no less than seven working days from date of the change, to the state mine inspector for review and approval. The inspector shall no less than annually, from the date of approval of an operator's emergency notification plan, notify the operator to insure that the plan on file with the state mine inspector is current.

**D.** The inspector shall retain a copy of each mine operator's approved emergency notification plan at the mine accident emergency operations center.

[N, 08/31/06; 19.6.2.8 NMAC - Rn, 11.8.2.8 NMAC & A, 9/30/08]

**19.6.2.11 FAILURE TO PROVIDE TIMELY NOTICE:**

**A.** The state mine inspector shall impose a civil penalty of up to one hundred thousand dollars (\$100,000) on the operator of a mine if it is determined that the operator failed to give immediate notice as required in [~~11.8.10 NMAC~~] 19.6.2.10 NMAC. The inspector may waive imposition of the civil penalty at any time if the inspector finds that the failure to give immediate notice was caused by cir-



cumstances outside the control of the operator.

~~(C)~~ **B.** In determining the amount of the penalty, the inspector shall consider all relevant factors including whether notice was provided at all to the inspector or, if notice was provided, the lateness of such notice and the seriousness of the accident. The inspector shall ~~in consultation with the mine safety advisory board, issue guidelines for assessing penalty amounts~~ utilize the penalty structure approved by the mining safety board.

**(1) Penalty points for coal mining operators based on coal production.**

<u>Annual tonnage of coal mine failing to provide timely notice</u>	<u>Penalty points</u>
<u>0 to 15,000</u>	<u>0</u>
<u>Over 15,000 to 30,000</u>	<u>1</u>
<u>Over 30,000 to 50,000</u>	<u>2</u>
<u>Over 50,000 to 100,000</u>	<u>3</u>
<u>Over 100,000 to 200,000</u>	<u>4</u>
<u>Over 200,000 to 300,000</u>	<u>5</u>
<u>Over 300,000 to 500,000</u>	<u>6</u>
<u>Over 500,000 to 800,000</u>	<u>7</u>
<u>Over 800,000 to 1.1 million</u>	<u>8</u>
<u>Over 1.1 million to 2 million</u>	<u>9</u>
<u>Over 2 million</u>	<u>10</u>

**(2) Penalty points for coal mining operators based on the coal production in New Mexico of the controlling entity.**

<u>Annual coal tonnage produced in New Mexico of controlling entity</u>	<u>Penalty points</u>
<u>0 to 100,000</u>	<u>0</u>
<u>Over 100,000 to 700,000</u>	<u>1</u>
<u>Over 700,000 to 1.5 million</u>	<u>2</u>
<u>Over 1.5 million to 5 million</u>	<u>3</u>
<u>Over 5 million to 10 million</u>	<u>4</u>
<u>Over 10 million</u>	<u>5</u>

**(3) Penalty points for metal/non-metal operators based on hours worked.**

<u>Annual hours worked at a M/NM mine failing to provide timely notice</u>	<u>Penalty points</u>
<u>0 to 10,000</u>	<u>0</u>
<u>Over 10,000 to 20,000</u>	<u>1</u>
<u>Over 20,000 to 30,000</u>	<u>2</u>
<u>Over 30,000 to 60,000</u>	<u>3</u>
<u>Over 60,000 to 100,000</u>	<u>4</u>
<u>Over 100,000 to 200,000</u>	<u>5</u>
<u>Over 200,000 to 300,000</u>	<u>6</u>
<u>Over 300,000 to 500,000</u>	<u>7</u>
<u>Over 500,000 to 700,000</u>	<u>8</u>
<u>Over 700,000 to 1 million</u>	<u>9</u>
<u>Over 1 million</u>	<u>10</u>

**(4) Penalty points for metal/non-metal operators based on annual hours worked in New Mexico by controlling entity of a M/NM mine.**

<u>Annual hours worked in New Mexico by controlling entity of a M/NM mine</u>	<u>Penalty points</u>
<u>0 to 60,000</u>	<u>0</u>
<u>Over 60,000 to 400,000</u>	<u>1</u>
<u>Over 400,000 to 900,000</u>	<u>2</u>
<u>Over 900,000 to 3 million</u>	<u>3</u>
<u>Over 3 million to 6 million</u>	<u>4</u>
<u>Over 6 million</u>	<u>5</u>

## (5) Penalty points based on operator negligence.

<u>Negligence</u>		
<u>Categories</u>	<u>Penalty points</u>	
	<u>Persons endangered</u>	<u>No endangerment</u>
<u>Low negligence - The operator failed to report the accident within the required 30 minutes but did report within 1 hour.</u>	<u>10</u>	<u>5</u>
<u>Moderate negligence - The operator failed to report the accident for more than 1 hour and less than 4 hours.</u>	<u>15</u>	<u>7</u>
<u>High negligence - The operator failed to report the accident for more 4 hours and less than 12 hours.</u>	<u>20</u>	<u>10</u>
<u>Reckless disregard - The operator failed to report the accident for greater than 12 hours, or the operator was previously fined for failure to report an accident within one year of the occurrence.</u>	<u>25</u>	<u>12</u>

## (6) Points based on type of accident.

<u>Type of accident (as prescribed in 30CFR, Part 50.2 h(1) - (12)</u> <u><i>There could be more than one category where the penalty points are accrued i.e., a fire at a mine that burns for more than 30 minutes and results in a fatality, would equal 40 penalty points.</i></u>	<u>Penalty points</u>	
	<u>Persons endangered</u>	<u>No endangerment</u>
<u>Fatality</u>	<u>25</u>	<u>N/A</u>
<u>An injury at a mine that has a reasonable potential to cause death</u>	<u>20</u>	<u>N/A</u>
<u>An entrapment of an individual for more than 30 minutes</u>	<u>10</u>	<u>5</u>
<u>An unplanned inundation of a mine by a liquid or gas</u>	<u>10</u>	<u>5</u>
<u>An unplanned ignition or explosion of gas or dust</u>	<u>15</u>	<u>5</u>
<u>An unplanned mine fire not extinguished within 30 minutes of discovery</u>	<u>15</u>	<u>7</u>
<u>An unplanned ignition or explosion of blasting agent or explosive</u>	<u>20</u>	<u>10</u>
<u>An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or, an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage</u>	<u>10</u>	<u>N/A</u>
<u>A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour</u>	<u>15</u>	<u>N/A</u>
<u>An unstable condition at an impoundment, refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank</u>	<u>10</u>	<u>N/A</u>
<u>Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes</u>	<u>10</u>	<u>5</u>
<u>An event at a mine that causes death or bodily injury to an individual not at the mine at the time the event occurs</u>	<u>20</u>	<u>N/A</u>

(7) Penalty amounts based on total points.

<b>Penalty conversion table</b>	
<u>Penalty points</u>	<u>Penalty</u>
<u>0 to 15 points</u>	<u>\$5,000</u>
<u>16 to 25 points</u>	<u>\$10,000</u>
<u>26 to 35 points</u>	<u>\$20,000</u>
<u>36 to 45 points</u>	<u>\$50,000</u>
<u>46 to 55 points</u>	<u>\$65,000</u>
<u>56 to 65 points</u>	<u>\$85,000</u>
<u>66 to 70 points</u>	<u>\$95,000</u>
<u>71 or more points</u>	<u>\$100,000</u>

**B- C.** If the state mine inspector determines that notice was not timely provided, the inspector shall within 90 days after notification of an accident or, if notice was not provided to the inspector, after ascertaining that an accident did occur at a mine, mail a notice of violation with a proposed penalty to the operator.

(1) The operator shall pay the penalty within 30 days after receipt of the notice.

(2) If the operator wishes to challenge the violation or request that the penalty be adjusted or waived, the operator must submit a written petition to the inspector within 20 days after receipt of the notice. Filing of a petition stays the requirement to pay the penalty. The operator may also submit written documentation in ~~[support]~~ support of his petition and may request a meeting with the inspector to discuss the circumstances of the violation.

(3) Within 60 days after receipt of a petition, the inspector shall issue a final decision upholding, amending or rescinding the notice of violation and penalty. The inspector may consider actions of the mining company in response to the violation when considering amending the penalty. If the final decision contains a penalty, the operator shall pay the penalty within 30 days after receipt of the notice.

**D.** In determining whether to waive imposition of the penalty, the inspector may consider factors such as, but not limited to:

(1) whether the mine was idled for any reason at the time of the accident;

(2) whether the mine operator encountered communications problems that made it impossible to provide timely notice;

(3) whether medical personnel determined that an injury was not considered life threatening immediately after an accident; if injury becomes life threatening, then notice requirements would be triggered when operator learns of a change in status from a medical authority;

(4) whether a fatality of mine personnel that occurs after an accident is associated with a specific accident; and

(5) whether the need to provide emergency medical treatment or emergency rescue and recovery efforts reasonably precluded the mine operator from timely providing notice.

[N, 08/31/06; 19.6.2.11 NMAC - Rn, 11.8.2.11 NMAC & A, 9/30/08]

**NEW MEXICO PUBLIC  
EDUCATION  
DEPARTMENT**

**TITLE 6 PRIMARY AND  
SECONDARY EDUCATION  
CHAPTER 22 PUBLIC SCHOOL  
FINANCE - ALLOCATION AND DIS-  
TRIBUTION  
PART 3 CHARTER SCHOOL  
STIMULUS FUND**

**6.22.3.1 ISSUING AGENCY:**  
Public Education Department  
[6.22.3.1 NMAC - Rp, 6.22.3.1 NMAC, 09-15-08]

**6.22.3.2 SCOPE:** Start-up and conversion charter schools  
[6.22.3.2 NMAC - Rp, 6.22.3.2 NMAC, 09-15-08]

**6.22.3.3 STATUTORY AUTHORITY:** Sections 22-2-1 and 22-8B-14, NMSA 1978  
[6.22.3.3 NMAC - Rp, 6.22.3.3 NMAC, 09-15-08]

**6.22.3.4 DURATION :**

Permanent  
[6.22.3.4 NMAC - Rp, 6.22.3.4 NMAC, 09-15-08]

**6.22.3.5 EFFECTIVE DATE:**  
September 15, 2008, unless a later date is cited at the end of a section.  
[6.22.3.5 NMAC - Rp, 6.22.3.5 NMAC, 09-15-08]

**6.22.3.6 OBJECTIVE:** To establish the application process and requirements for start-up charter schools to request financial support for start-up costs and initial costs associated with renovating or remodeling existing public buildings and structures.  
[6.22.3.6 NMAC - Rp, 6.22.3.6 NMAC, 09-15-08]

**6.22.3.7 DEFINITIONS:**  
A. "Authorizer" means either a local school board or the commission that permits the operation of a charter school.

B. "Charter school" means a conversion school or start-up school authorized by a chartering authority to operate as a charter school.

C. "Chartering authority" means either a local school board or the commission.

D. "Commission" means the public education commission.

E. "Conversion school" means an existing public school within a school district that was authorized by a local school board to become a charter school.

F. "Department" means the public education department.

G. "Division" means the charter school division of the department.

H. "Governing body" means the governing body of a charter school as set forth in the school's charter.

I. "Secretary" means the New Mexico secretary of public education.

J. "Start-up cost" means the initial costs associated with opening a start-up school.

K. "Start-up school" means a public school developed by one or more parents, teachers or community members authorized by a chartering authority to become a charter school.  
[6.22.3.7 NMAC - Rp, 6.22.3.7 NMAC, 09-15-08]

**6.22.3.8 CONTENTS OF**

**APPLICATION FOR CHARTER SCHOOL STIMULUS FUNDS:** The charter school shall submit an application to the division which shall include the following descriptions, outlines and plans.

A. The official minutes of the meeting at which the chartering authority approved the charter school application.

B. The amount of funds requested.

C. A budget plan that specifies in detail on what items of start-up cost the charter school will expend the funds and a specific time line for those expenditures.

D. A description of other resources or matching funds to be used in conjunction with the charter school stimulus funds.

E. A description of how these expenditures will support the establishment and initial operations of the charter school.

[6.22.3.8 NMAC - Rp, 6.22.3.8 NMAC, 09-15-08]

**6.22.3.9 ALLOWABLE START-UP COST:**

A. Start-up cost are limited to obligations which were incurred by the charter school on or after the date of the award letter granting the charter school stimulus funds and which were included in the charter school's stimulus budget as approved by the division.

B. The division may approve the use of stimulus funds for the reasonable and necessary cost for initial start-up of a charter school which may include furniture, equipment, classroom and administrative supplies and materials, curriculum materials, technology, professional development, consultant, architect and attorney fees, other necessary professional, educational or financial services and initial costs associated with renovating or remodeling of existing public buildings and structures.

C. Stimulus funds shall not be used for payment of salaries, out-of-state travel, and attorney costs for litigation or advice relating to litigation or any potential legal issues that are not directly related to start-up activities. The division shall not approve the use of stimulus funds for any costs associated with renovating or remodeling of existing non-public buildings and structures.

D. The division's approval or disapproval of allowable start-up costs shall be final and cannot be appealed to the secretary.

[6.22.3.9 NMAC - N, 09-15-08]

**6.22.3.10 DISTRIBUTION OF FUNDS:**

A. The division shall rec-

ommend to the secretary an amount to be awarded to the charter school based on approved start-up costs and projected enrollment.

B. The secretary shall issue an award letter that specifies the amount of stimulus funds the charter school shall receive and the period of time those funds will be available to the school.

C. Upon receipt from a charter school of a payment request with invoices or other supporting documentation required by the division, the division shall verify that the expenditures are allowable in order to approve, partially approve or deny the payment request.

D. All charter school stimulus funds awarded to a charter school must be expended or obligated within eighteen months from the date of the award letter.

E. Charter schools that receive charter school stimulus funds shall file periodic financial reports, as required by the department, to account for all stimulus funds awarded to the charter school.

F. If the charter school receives charter school stimulus funds and fails to expend all funds awarded within eighteen months from the date of the award letter, the charter school shall immediately reimburse the balance of any remaining charter school stimulus funds to the department.

G. If the charter school receives charter school stimulus funds and fails to begin operating within eighteen months from the date of the award letter, the charter school shall immediately reimburse all charter school stimulus funds to the department.

[6.22.3.10 NMAC - Rp, 6.22.3.9 NMAC, 09-15-08]

**HISTORY OF 6.22.3 NMAC:**

6 NMAC 11.2.3, Charter School Stimulus Fund, filed 9-3-1999

6.22.3 NMAC, Charter School Stimulus Fund, filed 10-31-2000

**History of Repealed Material:**

6.22.3 NMAC, Charter School Stimulus Fund, filed 10-31-2000 - Repealed effective 6-30-2008

**NEW MEXICO COMMISSION OF PUBLIC RECORDS**

**Notice of Repeal**

1.18.350 NMAC, Executive Records Retention and Disposition Schedule for the General Services Department, is being repealed and replaced with the new 1.18.350 NMAC, Executive Records Retention and Disposition Schedule for the General Services Department, effective

September 29, 2008.

1.18.805 NMAC, Executive Records Retention and Disposition Schedule for the New Mexico State Highway and Transportation Department, is being repealed and replaced with the new 1.18.805 NMAC, Executive Records Retention and Disposition Schedule for the Department of Transportation, effective September 29, 2008.

The New Mexico Commission of Public Records at their August 26, 2008 meeting repealed the current rules and approved the new rules.

**NEW MEXICO COMMISSION OF PUBLIC RECORDS**

August 27, 2008

Leo R. Lucero, Agency Analysis Bureau Chief  
NM Commission of Public Records  
1205 Camino Carlos Rey  
Santa Fe, New Mexico 87507

Mr. Lucero:

You recently requested to publish a synopsis in lieu of publishing the full content of the following rules:

- \* 1.18.350 NMAC E R R D S , General Services Department, and
- \* 1.18.805 NMAC E R R D S , Department of Transportation.

A review of the rules shows that their impact is limited to the individual agency to which it pertain, and it is "unduly cumbersome, expensive or otherwise inexpedient" to publish. Therefore, your request to publish a synopsis for it is approved.

Sincerely,

Sandra Jaramillo  
State Records Administrator

SJ/lrl

**NEW MEXICO COMMISSION OF PUBLIC RECORDS**

**SYNOPSIS**

**1.18.350 NMAC ERRDS, General Services Department**

**1. Subject matter:** 1.18.350 NMAC Executive Records Retention and Disposition Schedule for the General

Services Department. The retention and disposition requirements on this schedule are based on the legal and use requirements of the records and on their administrative, legal, fiscal and archival values. This records retention and disposition schedule was developed by the State Records Center and Archives (New Mexico Commission of Public Records), and approved by the State Records Administrator, the Director of the General Services Department, and legal counsel for the General Services Department.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the General Services Department. Persons and entities normally subject to the rules and regulations of the General Services Department may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the General Services Department.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the General Services Department. Any person or entity outside the covered geographical area that conducts business with or through the General Services Department may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7902.

**7. Effective date of this rule:** September 29, 2008

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.350 NMAC ERRDS, General Services Department.

\_\_\_\_\_  
Stephen Vigil Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

### SYNOPSIS

#### 1.18.805 NMAC ERRDS, Department of Transportation

**1. Subject matter:** 1.18.805 NMAC, Executive Records Retention and Disposition Schedule for the Department of Transportation. This rule is new and replaces 1.18.805 NMAC ERRDS, New Mexico State Highway and Transportation Department, an outdated version that was filed on 06/08/2000. This records retention and disposition schedule is a timetable for the management of specific records series created by the Department of Transportation. It describes each record series by record name, record function, record filing maintenance system, record content, record confidentiality, and record retention. The record retention is the life cycle of each records series. It indicates the retention or length of time a record series must be maintained by the department as well as its final disposition. The retention and disposition requirements in this rule are based on the legal use requirements of the records as well as on their administrative, fiscal and archival value. This rule was developed by the Records Management Division of the State Records Center and Archives (New Mexico Commission of Public Records) and approved by the State Records Administrator, the New Mexico Commission of Public Records and the Department of Transportation.

**2. Persons affected:** The persons affected are the record producing and record keeping personnel of the Department of Transportation. Persons and entities normally subject to the rules and regulations of the Department of Transportation may also be directly or indirectly affected by this rule.

**3. Interests of persons affected:** Interests include the records produced and maintained by the Department of Transportation.

**4. Geographical applicability:** Geographical applicability is limited to areas within the State of New Mexico covered by the Department of Transportation. Any person or entity outside the covered geographical area that conducts business with or through the Department of Transportation may also be affected by this rule.

**5. Commercially published materials incorporated:** The New Mexico Statutes

Annotated 1978 were used as reference in the development of this rule. However, they do not constitute a substantial portion of this rule.

**6. Telephone number and address of issuing agency:** New Mexico State Records Center and Archives, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505. Telephone number: (505) 476-7900.

**7. Effective date of this rule:** September 29, 2008.

#### Certification

As counsel for the State Records Center and Archives, I certify that this synopsis provides adequate notice of the content of 1.18.805 NMAC ERRDS, Department of Transportation.

\_\_\_\_\_  
Stephen Vigil Date  
Assistant Attorney General

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.790 NMAC, ERRDS, Department of Public Safety adding Section 39 effective 09/29/2008.

#### 1.18.790.39 STATE POLICE PROMOTIONAL FILES:

**A. Program:** training and recruiting

**B. Maintenance system:** chronological by calendar year

**C. Description:** records concerning the testing, evaluation and promotion of officers to the rank of sergeant or lieutenant. Files may include test preparation materials, list of qualified applicants, test, test scores, evaluation, final ranking list, list of candidates, final determination list, etc.

**D. Retention:** three years from date final determination list expires [1.18.790.39 NMAC - N, 09/29/2008]

**NEW MEXICO  
COMMISSION OF PUBLIC  
RECORDS  
AND NEW MEXICO  
DEPARTMENT OF  
INFORMATION  
TECHNOLOGY**

**TITLE 1           GENERAL    GOV-  
ERNMENT ADMINISTRATION  
CHAPTER 11    E-GOVERNMENT  
PART 2         REAL PROPERTY  
ELECTRONIC RECORDING**

**1.11.2.1           ISSUING AGENCY:**  
State Commission of Public Records - State  
Records Center and Archives and  
Department of Information Technology  
[1.11.2.1 NMAC - N, 9/15/2008]

**1.11.2.2           SCOPE:** all county  
clerks who accept and record real property  
records electronically.  
[1.11.2.2 NMAC - N, 9/15/2008]

**1.11.2.3           S T A T U T O R Y  
AUTHORITY:** Section 14-9A-5 NMSA  
1978 of the Uniform Real Property  
Electronic Recording Act gives the authori-  
ty to establish standards for the purpose of  
implementing the Uniform Real Property  
Electronic Recording Act to the state com-  
mission of public records and the depart-  
ment of information technology in consulta-  
tion with county clerks.  
[1.11.2.3 NMAC - N, 9/15/2008]

**1.11.2.4           D U R A T I O N :**  
Permanent  
[1.11.2.4 NMAC - N, 9/15/2008]

**1.11.2.5           EFFECTIVE DATE:**  
September 15, 2008 unless a later date is  
cited at the end of a section.  
[1.11.2.5 NMAC - N, 9/15/2008]

**1.11.2.6           OBJECTIVE:**

**A.** To keep the standards  
and practices of county clerks in New  
Mexico in agreement with the standards of  
national standard-setting bodies, such as  
PRIA, and in agreement with nationally  
accepted best practices in electronic real  
property recording.

**B.** To keep the technology  
used by county clerks in New Mexico com-  
patible with technology used by recording  
offices nationally that have enacted the  
Uniform Real Property Electronic  
Recording Act.

**C.** To keep the standards  
and practices of county clerks in New  
Mexico in agreement with professional  
standards and best practices in electronic  
records management.

**D.** To ensure electronic  
instruments that are public records filed and  
recorded by a county clerk are accessible.

**E.** To manage and retain  
real property records in accordance with  
established records management standards  
for electronic records (1.14.2 NMAC and  
1.13.3 NMAC) and the records retention  
and disposition schedule adopted by the  
commission of public records 1.19.3  
NMAC.

[1.11.2.6 NMAC - N, 9/15/2008]

**1.11.2.7           DEFINITIONS:**

**A.   “ACH”** (automated  
clearing house) means a network processing  
and delivery system that provides for the  
distribution and settlement of electronic  
credits and debits among financial institu-  
tions.

**B.   “Authentication”**  
means the act of tying an action or result to  
the person claiming to have performed the  
action. Authentication generally requires a  
password or encryption key to perform, and  
the process will fail if the password or key  
is incorrect.

**C.   “Authorized filer”**  
means a party who has entered into a MOU  
with a county clerk pursuant to 1.11.2.10  
NMAC.

**D.   “Digital electronic  
document”** means an instrument contain-  
ing information that is created, generated,  
sent, communicated, received, or stored by  
electronic means, but not created in original  
paper form.

**E.   “Digitized electronic  
document”** means a scanned image of the  
original document.

**F.   “Document”** means  
recorded information regardless of medium  
or characteristics that is:

(1) inscribed on a tangible medi-  
um or that is stored in an electronic or other  
medium and that is retrievable in perceiv-  
able form; and

(2) eligible to be recorded in the  
real property records maintained by a coun-  
ty clerk.

**G.   “E-governm e n t”**  
means government’s use of information  
technology to conduct business or exchange  
information with citizens, businesses or  
other federal, state and local government  
offices.

**H.   “Electronic”** as  
defined in the Uniform Real Property  
Electronic Recording Act means relating to  
technology having electrical, digital, mag-  
netic, wireless, optical, electromagnetic or  
similar capabilities.

**I.   “Electronic recording  
delivery system”** means an automated elec-  
tronic recording system implemented by a  
county clerk for recording instruments, and  
for returning to the party requesting the

recording, digitized or digital electronic  
instruments.

**J.   “Electronic docu-  
ment”** means a document that is received  
by a county clerk in an electronic form.

**K.   “Electronic signa-  
ture”** means an electronic sound, symbol or  
process attached to or logically associated  
with a document and executed or adopted  
by a person with the intent to sign the docu-  
ment.

**L.   “FTP”** means file  
transport protocol.

**M.   “HTTPS”** means  
hypertext transport protocol secure.

**N.   “Instrument”** as used  
in 1.11.2 NMAC means all deeds, mort-  
gages, leases of an initial term plus option  
terms in excess of five years, or memoranda  
of the material terms of such leases, assign-  
ments or amendments to such leases, lease-  
hold mortgages, United States patents and  
other writings affecting the title to real  
estate required to be recorded in the office  
of the county clerk of the county or counties  
in which the real estate affected thereby is  
situated.

**O.   “Memorandum of  
understanding (MOU)”** means a legal  
document outlining the terms and details of  
an agreement between parties, including  
each parties requirements and responsibili-  
ties.

**P.   “Metadata”** means  
“data about data”; it is information that  
describes another set of data. Metadata is  
descriptive information that facilitates the  
management of and access to other infor-  
mation. In the electronic recording context,  
metadata may be generated automatically or  
created manually and it may be internal or  
external to the digital object itself. Regard-  
less of how it is created or stored,  
maintaining accurate and reliable metadata  
is essential to the long-term preservation of  
electronic recordings.

**Q.   “MISMO”** means  
mortgage industry standards maintenance  
organization.

**R.   “PDF”(portable docu-  
ment format)** means a file format created  
for document exchange. PDF is a fixed-lay-  
out document format used for representing  
two-dimensional documents in a manner  
independent of the application software,  
hardware, and operating system.

**S.   “PDF/A”** means a sub-  
set of PDF that is an electronic document  
file format for long-term preservation of  
electronic documents that ensures the docu-  
ments can be reproduced the exact same  
way in years to come. A key element is the  
requirement for PDF/A documents to be  
100 percent self-contained. All of the infor-  
mation necessary for displaying the docu-  
ment in the same manner every time is  
embedded in the file. This includes, but is

not limited to, all content (text, raster images and vector graphics), fonts, and color information.

**T. “PRIA”** means the property records industry association. PRIA is a not-for-profit association representing business and government members of the property records industry. The main goal of the association is to facilitate recording and access to public real property records through research and the development and implementation of national standards and systems for the industry.

**U. “PKI” (public key infrastructure)** means a method of enabling a user of an unsecured public network such as the Internet to securely and privately exchange data and money through the use of a public and a private cryptographic key pair that is obtained and shared through a trusted authority. The public key infrastructure provides for a digital certificate that can identify an individual or an organization and directory services that can store and, when necessary, revoke the certificates.

**V. “Schema”** means a method for specifying the structure and content of specific types of electronic documents which use XML.

**W. “SMART Doc™”** means a technical framework for representing documents in an electronic format. This format links data, the visual representation of the form, and signature. The visual representation of the documents can utilize a variety of technologies such as XHTML, PDF, and TIFF. Previously SMART docs™ were called eMortgage documents. In order to better describe the actual capabilities of the technology, the word “eMortgage” was replaced by the acronym “SMART” which represents: securable, manageable, archivable, retrievable, and transferable.

**X. “UETA” (Uniform Electronic Transaction Act)** means a body of recommended legislation drafted in 1999 by the national conference of commissioners on uniform state laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts.

**Y. “URPERA” (Uniform Real Property Electronic Recording Act)** means a body of recommended legislation drafted in 2004 by the national conference of commissioners on uniform state laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recorders to accept electronic documents for recording in accordance with established standards. New Mexico adopted a modified version of URPERA during the 2007 legislative session. (see Laws 2007, Ch. 261, Section 1.)

**Z. “XHTML”** means

extensible hypertext mark-up language.

**AA. “XML” (extensible markup language)** means a computer language used to create markup languages. XML allows developers to specify a document type definition or schema in order to devise new markup languages for general or specific uses.

[1.11.2.7 NMAC - N, 9/15/2008]

**1.11.2.8 GENERAL PROVISIONS:** In accordance with the provisions of the URPERA the commission of public records and the department of information technology adopted the electronic recording standards issued by PRIA as the foundation for the standards promulgated as rule under 1.11.2 NMAC.

**A.** A county clerk may accept instruments for filing and recording electronically in accordance with the requirements of the Uniform Real Property Electronic Recording Act (14-9A-1 NMSA 1978) and 1.11.2 NMAC.

**B.** Any real property record created by electronic recording means shall meet established records management standards for electronic records (1.14.2 NMAC and 1.13.3 NMAC) and record retention requirements identified in the local government records retention and disposition schedule for county clerks, 1.19.3 NMAC.

**C.** A participating county clerk shall retain control and ownership of the electronic records created or received by the office of the county clerk and shall be responsible for their maintenance as public records pursuant to 1.14.2 NMAC, 1.13.3 NMAC and 1.15.2 NMAC.  
[1.11.2.8 NMAC - N, 9/15/2008]

**1.11.2.9 ELECTRONIC RECORDING MODELS:** Authorized filers shall submit real property records for electronic filing and recordation utilizing one of three methods described below. The methods are based on levels of automation and transaction structures identified in the PRIA *URPERA enactment and E-recording standards implementation guide*© utilized nationally to implement electronic recording.

**A. Method one.** An authorized filer transmits to the county clerk a digitized (scanned) document of an original document created in paper, signed in ink and notarized. The county clerk completes the recording process in the same way as paper using the imaged copy as the source document and determines the recording fees. Fees are usually paid from an escrow or ACH account the authorized filer establishes with the county clerk. Documents may be submitted in batches. Once the county clerk accepts the documents for

recording the scanned image is “burned” with the recording information, including recording date and time as well as the unique recording reference number, such as book and page number or instrument number. Indexing is performed by the indexing staff of the clerk’s office. The recorded image is returned to the authorized filer. Usually a recording receipt, together with the recording endorsement data, the authorized filer uses the data to create and print a label with the recording endorsement information. The label is affixed to the paper document, which is then processed as usual by the authorized filer.

**B. Method two.** An authorized filer transmits to the county clerk a digitized (scanned) document of an original document created in paper, signed in ink and notarized wrapped in an XML wrapper containing the data necessary for processing, indexing and returning the document. In the case of a scanned paper document, method 2 further extends method 1 by adding data that improves the process, specifically the indexing process in the clerk’s office. The recordable documents are generally delivered to the county clerk’s website by whatever means the parties agree, including HTTPS, web services, and FTP. Documents may be submitted in batches. Authentication of the submitter is required based on an account and personal identification number. Digital signatures and certificates may be used. The documents are stored in a secure area on the clerk’s web site until the clerk’s system retrieves them. Once imported into the clerk’s system, the clerk’s system handles the recording functions. The system imports the data from an XML wrapper, including index data. The indexing process is partially automated, but the image must be visually inspected to determine that it meets recording requirements as well as possibly to validate against the data in the XML wrapper. If a document meets the requirements, it is recorded. The recording information is “burned” onto the image and returned to the authorized filer by means agreed upon by the parties in a MOU. Fees are paid based on the method agreed upon through the MOU, usually fees are paid from an escrow or ACH account the authorized filer maintains with the county clerk.

**C. Method three.** An authorized filer transmits to the county clerk digital electronic documents that have been created, signed and notarized electronically along with the electronic indexing information. Real property documents are typically generated on a vendor’s document preparation system usually in XHTML format. [Currently the XHTML format (XML data - HTML formatting) is used or other similar formats, such as MISMO’s SMART Doc

format or PDF's intelligent document that incorporate the XML data and link it to the content displayed.] The submitter logs on to the system and enters the information necessary to generate the document. Once the document has been generated, the person signs it if he or she has the authority, or notifies the person with signing authority to sign. Secure access is required for all parties that must sign the document because signing is done by digital signature. Once the documents are electronically signed and notarized, they are released for recording. The document preparation system compares each document against recording rules to ensure its recordability and then calculates recording fees. Documents may be submitted in batches. Documents received at the county clerk's system are re-checked against the requirements to determine whether or not they may be recorded. If not, they are rejected and returned to the authorized filer. Otherwise they are accepted for recording and the data for recording is extracted from the documents and passed to the county clerk's recording system. The endorsement data is received from the clerk's system and entered onto the respective documents usually in XML format. Fees are paid based on the method agreed upon through the MOU.

[1.11.2.9 NMAC - N, 9/15/2008]

**1.11.2.10 MEMORANDUM OF UNDERSTANDING:** A filer shall apply to a participating county clerk to be enrolled in the participating county clerk's electronic filing and recording program.

**A.** The authorized filer and a participating county clerk shall enter into a memorandum of understanding (MOU) relating to the terms and conditions of participation in the county clerk's electronic filing and recording program. The provisions of the MOU shall be consistent with 1.11.2 NMAC and the Uniform Real Property Electronic Recording Act. At a minimum the MOU shall address the items described immediately below.

(1) Instruments permitted to be filed electronically. The agreement shall identify the types of real property records permitted to be filed electronically, which may be amended from time to time by the clerk.

(2) Payment of filing fees. The MOU shall require the payment of recordation taxes, recording fees or clerk's fees assessed by statute, and establish the manner and method of such payment.

(3) Notarization. The MOU shall provide that electronic real property recordings shall comply with requirements for notarization pursuant to New Mexico statutes and rules adopted by the secretary of state.

(4) Notification of submission for

recordation. The MOU shall provide that the clerk shall issue to the authorized filer an electronic or other written notification that the electronic document has been received by the clerk. The notification shall include the date and time of the receipt of the electronic instrument.

(5) Notification of rejection. The MOU will provide that the electronic instruments submitted for recordation shall be rejected if they fail to meet 1.11.2 NMAC image or file-format specifications and security requirements; comply with New Mexico statute requirements; or comply with the requirements established by the county clerk for electronic recording of real property records.

(6) Transmittal sheet requirements. The MOU shall provide that authorized filers shall comply with transmittal sheet requirements outlined in Subsection C of 1.11.2.10 NMAC.

(7) The MOU shall establish an effective date and duration of the MOU or conditions for termination.

(8) Authorized filer contact information. The MOU shall require authorized filers to provide full information of persons to contact, including an administrative contact person and an information technology contact person.

(9) Liabilities and responsibilities of the authorized filer. The MOU shall require authorized filers to be responsible for keeping their encryption keys secure pursuant to Subsection D of 1.11.2.11 NMAC and for establishing internal controls to assure the security of the private key is not compromised and shall charge them with the responsibility to notify the clerk's office of a compromise to address any breach of internal controls.

(10) Breach of agreement by authorized filer. If an authorized filer fails to take immediate corrective and remedial action for any security compromise, the clerk may revoke the authorized filer's privileges to file electronically.

**B.** A participating county clerk may include in the MOU other procedures and requirements consistent with 1.11.2 NMAC in order to implement fully an electronic filing and recording program. [1.11.2.10 NMAC - N, 9/15/2008]

**1.11.2.11 DOCUMENT AND SYSTEM SECURITY REQUIREMENTS:** Security procedures shall be implemented to ensure the authenticity and integrity of the electronically filed instrument, including the ability to verify the identity of the filer, as well as the ability to verify that an instrument has not been altered since it was transmitted or filed. In order to protect the integrity of instruments to be recorded electronically, a participating county clerk and authorized filers shall meet

the security procedure requirements set forth below.

**A.** An electronic recording delivery system implemented by a county clerk shall provide a secure method for accepting and recording digital or digitized electronic instruments. The system shall not permit an authorized filer or its employees and agents, or any third party, to modify, manipulate, insert or delete information in the public record maintained by the county clerk, or information in electronic records submitted pursuant to 1.11.2.NMAC.

**B.** Security standards implemented by county clerks shall accommodate electronic signatures and notarization of documents in a manner that complies with 12.9.2 NMAC, *Performing Electronic Notarial Acts* and that address the following encryption requirements. The electronic recording delivery system shall:

(1) support, at a minimum, 128-bit file and image encryption over a secure network;

(2) provide for periodic updates to encryption by the electronic recording delivery system vendor;

(3) advise the authorized filer of its liabilities and responsibilities for keeping its keys secure;

(4) provide a secure key management system for the administration and distribution of cryptographic keys; and

(5) require all encryption keys to be generated through an approved encryption package and securely stored.

**C.** The electronic recording delivery system shall control interactive access to the system through authentication processes that:

(1) utilize a process of requesting, granting, administering and terminating accounts;

(2) address the purpose, scope, responsibilities and requirements for managing accounts;

(3) designate one or more individuals to manage accounts; and

(4) provide for secure delivery of the authorized filer (s) initial password(s) and prohibit the transmission of identification and authentication information (password) without the use of industry-accepted encryption standards.

**D.** County clerks shall have a key management system in place for the secure administration and distribution of cryptographic keys.

(1) The electronic recording delivery system shall authenticate the authorized filer's private key.

(2) Authorized filers shall establish internal controls to assure the security of the private key is not compromised and certify compliance with the county clerk as part of the MOU.

(3) Security of private keys com-



promised within the electronic recording delivery system shall be promptly addressed by the clerk.

**E.** A risk analysis to identify potential threats to the electronic recording delivery system and the environment in which it operates shall be conducted at least once every three years by the county clerk and shall be submitted to the department of information technology and the commission of public records. The purpose of the risk analysis is to prevent the filing and recording of fraudulent instruments or alteration of instruments that were previously filed and recorded electronically. A risk analysis shall identify and evaluate system and environmental vulnerabilities and determine the loss impact if one or more vulnerabilities are exploited by a potential threat. The risk analysis shall include:

(1) a risk mitigation plan that defines the process for evaluating the system;

(2) documentation of management decisions regarding actions to be taken to mitigate vulnerabilities;

(3) identification and documentation of implementation of security controls as approved by management; and

(4) a reassessment of the electronic recording delivery system security after recommended controls have been implemented or in response to newly discovered threats and vulnerabilities.

**F.** Authorized filers who are enrolled in a participating county clerk's electronic filing and recording program shall implement security procedures for all electronic filing transmissions and shall be responsible for maintaining the security of the systems within their respective offices.

**G.** Electronic recording delivery systems shall protect against system and security failures and, in addition, shall provide normal backup and disaster recovery mechanisms.

[1.11.2.11 NMAC - N, 9/15/2008]

#### **1.11.2.12 ELECTRONIC TRANSMISSIONS:**

**A.** Instruments shall be transmitted through either a secured website or an electronic recording delivery system. The method of transmission shall be identified in the MOU (1.11.2.10 NMAC) signed by the authorized filer and the county clerk.

**B.** An authorized filer shall visually inspect each instrument prior to transmitting to ensure compliance with existing statutory recording requirements and 1.11.2 NMAC;

**C.** Instruments submitted for filing shall have a transmittal sheet containing the following information and order:

(1) document type - title of the document type shall be stated at the top of

the page below the top margin;

(2) return to - all cover transmittal sheets shall have a return to name, address, phone and fax numbers and email address;

(3) party names - all party names to be indexed shall be listed with the grantor's last name, then first, and middle names, followed by the grantee's last name, first and middle names and full name of business entities bolded, underlined or capitalized in a way to stand out for indexing;

(4) subsequent references - references to the original document on subsequent documents shall appear conspicuously on the first page of all subsequent documents;

(5) legal description - if legal description is provided the page number on which the legal description is printed shall be referenced;

(6) recording fee - the amount of the recording fee; and

(7) property tax - the name and address on deed of party responsible to pay property tax shall appear on the first page of the document.

[1.11.2.12 NMAC - N, 9/15/2008]

#### **1.11.2.13 ELECTRONIC RECORDING PROCESS REQUIREMENTS:**

**A.** An MOU between a participating county clerk and an authorized filer shall include information required by the participating county clerk in order to provide electronic notice of confirmation or rejection of an electronic filing and subsequent recording, or if such electronic notice is not possible, by telephone or facsimile. The MOU shall address the requirements outlined in 1.11.2.10 NMAC.

**B.** When a participating county clerk provides acknowledgment of receipt of an instrument filed electronically, the instrument shall be considered to have been filed in compliance with the applicable regulations and laws relating to filing of an instrument with the county clerk.

**C.** A notice of confirmation of recording or a notice of rejection for recording shall be provided by a participating county clerk to an authorized filer no later than the first business day after the instrument is filed electronically.

(1) A notice of confirmation shall include recording information for the instrument accepted for recording and shall identify the instrument accepted for recording, as provided in the agreement.

(2) A notice of rejection shall include a brief explanation of the reason or reasons for rejection and shall identify the instrument rejected for recording, as provided in the agreement.

(3) If a participating county clerk complies with the notice provisions of the

agreement, the failure of an authorized filer to receive notice of confirmation or rejection of filing and subsequent recording shall not affect the validity of the confirmation or rejection.

**D.** The authorized filer shall be responsible for returning the original instrument to the party or parties entitled to it after notice of confirmation of recording is received by the authorized filer and for providing to such party or parties the recording information set forth in the notice of confirmation from the participating county clerk.

[1.11.2.13 NMAC - N, 9/15/2008]

#### **1.11.2.14 ELECTRONIC SIGNATURES AND NOTARY ACKNOWLEDGEMENT:**

A county clerk that accepts for recording electronically signed and notarized instruments utilizing digital signatures based on PKI encryption technology shall do so in accordance with rules promulgated by the secretary of state. For purposes of efficiency, participating county clerks are encouraged to utilize technology and to accept digital certificates from certification authorities compatible with the technology used and certificates accepted by other participating county clerks.

[1.11.2.14 NMAC - N, 9/15/2008]

#### **1.11.2.15 DOCUMENT FORMATS:**

**A.** Authorized filers may elect to transmit either a digitized (scanned) electronic document of an original ink signed instrument or an electronic document electronically signed and notarized along with electronic indexing information to the county clerk.

**B.** Digitized (scanned) electronic documents shall meet the following specifications:

(1) provide fidelity to the original appearance of any instrument at the time such instrument was first created, whether by electronic or other means;

(2) retain the original content;

(3) be scanned at a minimum of 300 dpi;

(4) be scanned in TIFF or PDF/A formats;

(5) be scanned in portrait mode;

(6) shall capture document images in any multi-page storage format as specified by the county clerk; and

(7) shall be legible to enable reproduction onto microfilm or microfiche to meet 1.14.2 NMAC requirements.

**C.** Digital electronic documents transmitted to the county clerk for recording shall meet PRIA formatting and document data field standards. The commission of public records and the department of information technology have adopt-

ed by reference PRIA and MISMO electronic document formatting and data field standards.

**D.** Electronic recordings shall be converted to (if necessary) and preserved as TIFF or PDF files along with their associated metadata. Method 3 submissions shall be converted to TIFF or PDF to meet preservation requirements pursuant to 1.14.2 NMAC.

[1.11.2.15 NMAC - N, 9/15/2008]

**1.11.2.16 DOCUMENT AND INDEXING REQUIREMENTS:**

Electronic recording delivery systems implemented by county clerks shall have the capacity at a minimum to process documents that are compatible with indexing requirements established by PRIA for file formatting and indexing.

**A.** The *PRIA eRecording XML Standard v2.4.1* is adopted by reference. The most current version of the PRIA indexing and document format standards may be found at the PRIA website at <http://pria.us/>.

**B.** Indexing fields for each document code shall require the minimum index fields listed below:

- (1) grantor(s) or equivalent grantee(s) or equivalent.
- (2) document type recording fee related (original document number, in the case of releases, assignment, amendments, etc.).

(3) legal description fields as specified by county.

(4) standard PRIA tags defined for these fields must be used. <http://pria.us/>  
[1.11.2.16 NMAC - N, 9/15/2008]

**1.11.2.17 PAYMENT OF FILING FEES:**

Payment of recording fees shall be collected by a county clerk as prescribed by statute. The clerk shall provide an electronic or other written receipt to the authorized filer indicating that the payment for the recordation of the electronic instrument has been received and processed by the clerk. The electronic recording delivery system may generate an automated electronic report which complies with this requirement. The clerk shall provide authorized filers with a list of payment methods which may be used for the recordation of electronic real property records.

[1.11.2.17 NMAC - N, 9/15/2008]

**1.11.2.18 PRESERVATION:**

Real property records in the custody of the county clerk are permanent records and must be preserved. The preservation of electronic real property records requires consistent and complex management in order to maintain authenticity and integrity. Electronic records are subject to the same threats of destruction as other mediums

such as natural or human-made disasters. There are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling. The durability of electronic records has not been proven to be as enduring as microfilm. In order to secure and preserve information created and stored electronically, permanent digital real property records shall be converted to microfilm. Microfilm shall meet standards established by the commission of public records 1.14.2.10 NMAC.

[1.11.2.18 NMAC - N, 9/15/2008]

**HISTORY OF 1.11.2 NMAC:**  
[RESERVED]

**NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION**

This is an amendment to 13.4.7 NMAC Section 2, effective 9-15-08.

**13.4.7.2 SCOPE:**

**A.** This rule applies to all licensed agents, brokers, limited surety agents, solicitors, bail bond solicitors, property bondsmen, nonresident agents, and nonresident brokers unless exempted by subsection B of this section.

**B.** The continuing education requirements of this rule shall not apply to:

(1) holders of limited licenses issued pursuant to NMSA 1978 Section 59A-12-18;

(2) persons who have been licensed as agents, solicitors, nonresident agents or nonresident brokers for 25 years or more;

(3) persons who maintain a license solely for the purpose of receiving renewal fee residuals and who do not otherwise transact the business of insurance;

(4) agents of fraternal benefit societies licensed pursuant to NMSA 1978 Section 59A-44-33; or

(5) nonresident agents and nonresident brokers who are licensed in another state or country ~~and who are subject to continuing education requirements in the state or country in which they are licensed~~.  
[13.4.7.2 NMAC - Rp, 13 NMAC 4.7.2, 5-1-02; A, 9-15-08]

**NEW MEXICO REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 48 PRIVATE LAW ENFORCEMENT PRACTITIONERS PART 1 GENERAL PROVISIONS**

**16.48.1.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.1.1 NMAC - Re-pr, 16.48.1.1 NMAC, 09/24/08]

**16.48.1.2 SCOPE:** This part applies to the board, licensees, registrants, applicants, and the general public.

[16.48.1.2 NMAC - Re-pr, 16.48.1.2 NMAC, 09/24/08]

**16.48.1.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-2, 61-27B-3, 61-27B-4, 61-27B-5, 61-27B-12, 61-27B-22, 61-27B-28 & 61-27B-29.

[16.48.1.3 NMAC - Re-pr, 16.48.1.3 NMAC, 09/24/08]

**16.48.1.4 DURATION:** Permanent

[16.48.1.4 NMAC - Re-pr, 16.48.1.4 NMAC, 09/24/08]

**16.48.1.5 EFFECTIVE DATE:** September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.1.5 NMAC - Re-pr & A, 16.48.1.5 NMAC, 09/24/08]

**16.48.1.6 OBJECTIVE:** To define terms relevant to private investigations, when a license is required, persons exempted, custody and alteration of license, transferability, display of license, notification of changes, local regulations, and professional ethical standards.

[16.48.1.6 NMAC - Re-pr, 16.48.1.6 NMAC, 09/24/08]

**16.48.1.7 DEFINITIONS:** As used in these regulations, the following words and phrases have the following meanings, unless the context or intent clearly indicates a different meaning:

**A. "act"** means the New Mexico Private Investigations Act;

**B. "alarm company"** means a company that installs burglar or security alarms in a facility and responds

with guards when the alarm is sounded;

**C. "applicant"** means any natural person who is applying for registration or licensure pursuant to the private investigations act;

**D. "armored car company"** means a company that knowingly and willingly transports money and other negotiables for a fee or other remuneration;

**E. "board"** means the New Mexico private investigations advisory board;

**F. "bodyguard"** means an individual who physically performs the mission of personal security for another individual;

**G. "branch office"** means an office of a private investigation company or a private patrol company physically located in New Mexico and managed, controlled or directed by a private investigations manager or private patrol operations manager;

**H. "charts"** means a continuous recording of the physiological changes in human respiration, cardiovascular activity and skin resistance or conductance;

**I. "client"** means an individual or legal entity having a contract that authorizes services to be provided in return for financial or other consideration;

**J. "conviction"** means any final adjudication of guilty, whether pursuant to a plea of guilty or nolo contendere or otherwise and whether or not the sentence is deferred or suspended;

**K. "department"** means the regulation and licensing department;

**L. "individual"** means a single human being;

**M. "legal business entity"** means a sole proprietorship, corporation, partnership, limited liability company, limited liability partnership or other entity formed for business purposes;

**N. "licensee"** means a person licensed pursuant to the Private Investigations Act;

**O. "polygraph examiner"** means an individual licensed by the department to engage in the practice of polygraphy;

**P. "polygraph examination"** also referred to as a psychophysiological detection of deception (PDD) means a test or series of tests designed to assess the truthfulness of an examinee to an issue or issues of concern and includes all charts, reports, allied documents and recordings generated or received regarding the testing procedures;

**Q. "polygraph instrument"** means a mechanical or digital computer instrument that, at a minimum, records simultaneously physiological

changes in human respiration, skin resistance or conductance, and cardiovascular activity including relative blood pressure or volume;

**R. "polygraphy"** means the process of employing an instrument designed to graphically record simultaneously the physiological changes in human respiration, cardiovascular activity, galvanic skin resistance or reflex for the purpose of lie detection and includes the reading and interpretation of polygraphic records and results or any other device used to measure truthfulness;

**S. "private investigation company"** means a legal business entity that provides private investigation services, the location of which may be within or outside of the state, provided that the private investigation services are performed within New Mexico;

**T. "private investigator"** means an individual who is licensed by the department to engage in business or who accepts employment to conduct an investigation pursuant to the Private Investigations Act to obtain information regarding:

(1) crime or wrongs done or threatened against the United States or any state or territory of the United States;

(2) a person;

(3) the location, disposition or recovery of lost or stolen property;

(4) the cause or responsibility for fires, losses, accidents or damage or injury to persons or properties;

(5) the securing of evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer; or

(6) the scene of a motor vehicle accident or evidence related to a motor vehicle accident;

**U. "private investigations employee"** means an individual who is registered by the department to work under the direct control and supervision of a private investigator for a private investigation company;

**V. "private investigations manager"** means an individual who:

(1) is licensed as a private investigator and is issued a license by the department as a private investigations manager;

(2) directs, controls or manages a private investigation company for the owner of the company; and

(3) is assigned to and operates from the private investigation company that the private investigations manager is licensed to manage or from a branch office of that private investigation company;

**W. "private patrol company"** means a legal business entity, the location of which may be within or outside of the state, including an independent or

proprietary commercial organization that provides private patrol operator services that are performed in New Mexico and the activities of which include employment of licensed private patrol operators or security guards;

**X. "private patrol employee"** means an individual who is registered by the department to work under the direct control and supervision of a private patrol operator for a private patrol company;

**Y. "private patrol operations manager"** means an individual who:

(1) is licensed as a private patrol operator or registered as a level three security guard and is issued a license by the department as a private patrol operations manager;

(2) directs, controls or manages a private patrol company for the owner of the company; and

(3) is assigned to and operates from the private patrol company that the private patrol operations manager is licensed to manage or from a branch office of that private patrol company;

**Z. "private patrol operator"** means an individual who is licensed by the department to:

(1) conduct uniformed or nonuniformed services as a watchman, security guard or patrolman to protect property and persons on or in the property;

(2) prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind; or

(3) perform the services required of a security guard or security dog handler or provide security services for an armored car company;

**AA. "proprietary commercial organization"** means an organization or division of an organization that provides full- or part-time security guard services solely for itself;

**BB. "provisional license"** means a license to practice polygraphy for the probationary period that is required to determine operational competency;

**CC. "registrant"** means an individual registered as a private investigations employee, a private patrol operations employee or a security guard at any level;

**DD. "screening examination"** means any examination that is non-specific and deals with general background information;

**EE. "security dog handler"** means an individual who patrols with dogs to detect illegal substances or explosives;

**FF. "security guard"** means an individual who is registered to

engage in uniformed or nonuniformed services under the direct control and supervision of a licensed private patrol operator or a private patrol operations manager to perform such security missions as watchman, fixed post guard, dog handler, patrolman or other person to protect property or prevent thefts; and

**GG. "sponsor"** means a licensed polygraph examiner;

**HH. "special event"** means a parade or other public or private event of short duration requiring security;

**II. "specific event examination"** means any examination that deals with a specific issue, crime or incident, criminal or otherwise;

**JJ. "superintendent"** means the superintendent of the regulation and licensing department;

**KK. "test data"** means the physiological data recorded or collected during a polygraph examination;

**LL. "test data analysis"** means the quantitative application of standardized scoring rules to the physiological test data and includes the use of computerized scoring programs.

[16.48.1.7 NMAC - Re-pr, 16.48.1.7 NMAC, 09/24/08]

#### **16.48.1.8 CODE OF ETHICS AND CREED OF CONDUCT:**

**A.** Code of ethics for private security management. As managers of private security functions and employees, we pledge:

(1) to recognize that our principal responsibilities are, in the services of our organizations and clients, to protect life and property as well as to prevent and reduce crime against our business, industry, or other organizations and institutions; and in the public interest, to uphold the law and to respect the constitutional rights of all persons;

(2) to be guided by a sense of integrity, honor, justice and morality in the conduct of business; in all personnel matters; in relationships with government agencies, client and employers; and in responsibilities to general public;

(3) to strive faithfully to render security services of the highest quality and to work continuously to improve our knowledge and skills and thereby improve the overall effectiveness of private security;

(4) to uphold the trust of our employers, our clients, and the public by performing our function within the law, nor ordering or condoning violations of law, and ensuring that our security personnel conduct their assigned duties lawfully and with proper regard for the rights of others;

(5) to respect the reputation and practice of others in the private security field, but to expose to the proper authorities

any conduct that is unethical or unlawful;

(6) to apply uniform and equitable standards of employment in recruiting and selecting personnel regardless of race, creed, color, sex or age and in providing salaries commensurate with job responsibilities and with training, education and experience;

(7) to cooperate with recognized and responsible law enforcement and other criminal justice agencies; to comply with security licensing and registration laws and other statutory requirements that pertain to our business;

(8) to respect and protect the confidential and privileged information of employers and clients beyond the terms of our employment, except where their interests are contrary to law or to this code of ethics;

(9) to maintain a professional posture in all business relationships with employers, and clients, with others in the private security field, and with members of other professions; and to insist that our personnel adhere to the highest of professional conduct;

(10) to encourage the professional advancement of our personnel by assisting them to acquire appropriate security knowledge, education and training;

**B.** Code of ethics for private security employees. In recognition of the significant contribution of private security to crime prevention and reduction, as a private security guard, I pledge:

(1) to accept the responsibilities and fulfill the obligations of my role: protecting life and property; preventing and reducing crimes against my employer's business, or other organizations and institutions to which I am assigned; upholding the law; and respecting the constitutional rights of all persons;

(2) to conduct myself with honesty and integrity and to adhere to the highest moral principles in the performance of my security duties;

(3) to be faithful, diligent and dependable in discharging my duties, and to uphold at all times the laws, policies, and procedures that protect the rights of others;

(4) to observe the precepts of truth, accuracy, and prudence without allowing personal feelings, prejudices, animosities or friendships to influence my judgments;

(5) to report to my superiors, without hesitation, any violation of the law or of my employer's or client's regulation;

(6) to respect and protect the confidential and privileged information of my employer or client beyond the term of my employment, except where their interests are contrary to law or to this code of ethics;

(7) to cooperated with all recognized and responsible law enforcement and

government agencies in matters within their jurisdiction;

(8) to accept no compensation, commission, gratuity or other advantage without the knowledge and consent of my employer;

(9) to conduct myself professionally at all times, and to perform my duties in a manner that reflects upon myself, my employer, and private security;

(10) to strive to continually to improve my performance by seeking training and educational opportunities that will better prepare me for my private security duties.

**C.** Code of ethics for polygraph examiners.

(1) I shall at all times conduct myself in a manner reflecting credit to the polygraph profession.

(2) I shall deal fairly and impartially with all individuals, regardless of social, political, racial, religious, ethnic, economic or fraternal status.

(3) I shall keep all decisions free of personal or any other extraneous influence and render unbiased opinion in all decisions.

(4) I shall not publish misleading advertisements or claims concerning the polygraph profession. I shall advise each client or examinee of the infeasibility of conducting an examination where I encounter conditions or circumstances that so warrant.

(5) I shall not conduct a polygraph examination of any person I have reason to believe may be mentally or physically unfit, without first seeking an opinion of medical, psychological or psychiatric authority, as appropriate, prior to testing.

(6) I shall not include an opinion in any decision or report relating to medical, psychological, psychiatric, legal, or any other field in which I am not qualified.

(7) I shall refrain from criticizing or maligning other polygraph examiners except as required by legal proceedings.

(8) I shall not testify concerning polygraph charts of another examiner until I have satisfied the requirements of NM Rule of Evidence 11-707, NMRA 2004.

(9) I shall support the professional goals of the polygraph profession at every opportunity.

(10) I shall consider the integrity and goals of the polygraph profession above my personal desires and ambitions.

**D.** Polygraphy creed of conduct: To encourage uniformity of procedures, enhance the image of polygraphy, promote the welfare of the public, establish standards and promote an understanding among all polygraphers operating in the state of New Mexico, the following standards of principle are endorsed.

(1) The primary goal of a poly-

graph examination is to assess truth or deception, respecting all rights of the examinee and using proper polygraph techniques and procedures.

(2) No examinee will be compelled to take a polygraph examination except in compliance with existing law or terms of probation or parole. No force, threats, duress, coercion or promises will be made by a licensee in an effort to complete a polygraph examination.

(3) A minimum of three charts is required to reach a conclusive diagnostic opinion in any polygraph examination conducted by a licensee.

(4) Inquiries into the personal life, sexual habits, political or religious principles, or any other aspects of one's life that are not connected to, or necessary for, addressing the issue concerned will not be made.

(5) Examinations addressing secondary aspects of an unresolved direct issue will not be made merely to avoid or circumvent addressing a primary issue or to satisfy the personal desires of the examinee or client.

(6) Information concerning polygraph examinations will not be released to unauthorized persons. This does not preclude consultation with other examiners, or testimony before legal proceeding or other duly constituted authority, or information requested by the department.

(7) It is the responsibility of each examiner to promote proper polygraph procedures. Knowledge of deliberate violations of the law governing polygraphy should be brought to the attention of the department and any relevant national professional association for consideration and action, if appropriate.

[16.48.1.8 NMAC - Re-pr, 16.48.1.8 NMAC, 09/24/08]

#### 16.48.1.9 SAVINGS CLAUSE:

If any provision of these rules or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.

[16.48.1.9 NMAC - Re-pr, 16.48.1.9 NMAC, 09/24/08]

#### 16.48.1.10 PRACTICING WITHOUT A LICENSE: It is unlawful for an individual to:

A. act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager or to make any representation as being a licensee or registrant unless the individual is licensed by the

department pursuant to the Private Investigations Act (61-27B-1 NMSA 1978);

B. render physical protection for remuneration as a bodyguard unless the individual is licensed as a private investigator or a private patrol operator;

C. continue to act as a private investigator, private patrol operator, security guard, private investigations employee, private investigations manager or private patrol operations manager if the individual's license issued pursuant to the Private Investigations Act has expired or been suspended or revoked;

D. falsely represent that the individual is employed by a licensee; or

E. practice polygraphy for any remuneration without a license issued by the department in accordance with the Private Investigations Act.

[16.48.1.10 NMAC - Re-pr & A, 16.48.1.10 NMAC, 09/24/08]

#### 16.48.1.11 LICENSURE EXEMPTIONS:

A. As used in this section, "temporary" means a period of time not to exceed the duration of one private event or one school or nonprofit organization event, as described in Paragraphs (2) and (3) of Subsection B of this section.

B. The Private Investigations Act does not apply to:

(1) an individual employed exclusively and regularly by one employer in connection with the affairs of that employer, provided that the individual patrols or provides security only on the premises of the employer as limited by the employer;

(2) an individual employed exclusively to provide temporary security at a private event that is not open to the public;

(3) individuals providing temporary security at athletic or other youth events and where the events occur under the auspices of a public or private school or a nonprofit organization;

(4) an attorney licensed in New Mexico conducting private investigations while engaged in the practice of law;

(5) an officer or employee of the United States or this state or a political subdivision of the United States or this state while that officer or employee is engaged in the performance of the officer's or employee's official duties or an employee working exclusively on federal government property for a private patrol company contracting with the federal government and the security guard has training that exceeds state requirements unless the federal government contract requires state licensing;

(6) a person engaged exclusively in the business of obtaining and furnishing information concerning the financial rating of persons;

(7) a charitable philanthropic society or association duly incorporated under the laws of this state that is organized and maintained for the public good and not for private profit;

(8) a licensed collection agency or an employee of the agency while acting within the scope of employment while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or the debtor's property;

(9) admitted insurers, adjusters, agents and insurance brokers licensed by the state performing duties in connection with insurance transactions by them; or

(10) an institution subject to the jurisdiction of the director of the financial institutions division of the department or the comptroller of currency of the United States.

[16.48.1.11 NMAC - Re-pr & A, 16.48.1.11 NMAC, 09/24/08]

#### 16.48.1.12 CUSTODY AND ALTERATION OF LICENSES:

A. Licenses and registrations issued by the department are at all times the property of the department, and may remain in the custody of the licensee or registrant only as long as the licensee or registrant complies with the act and department rules.

B. Licenses shall not be altered in any way.

C. Inspectors or board designees may retrieve any license which is suspended, revoked, expired, or left by a licensee who is no longer employed at an establishment.

[16.48.1.12 NMAC - Re-pr, 16.48.1.12 NMAC, 09/24/08]

#### 16.48.1.13 LICENSE NOT TRANSFERABLE; CHANGE IN OWNERSHIP OR MANAGEMENT; NAME CHOICE AND NAME CHANGE:

A. A license or registration issued by the department pursuant to the Private Investigations Act shall not be transferred or assigned.

B. A change of ownership or management of a private investigation company or private patrol company shall be filed with the department on an application form prescribed by the department, accompanied by the required fees, within thirty (30) days following any such change. Failure to file for a change of a private investigation company or private patrol company within the thirty (30) day period shall be grounds for termination of the license of a private investigation company or private patrol company.

C. A change in the name of a private investigation company or pri-

vate patrol company shall require a name change application on a form provided by the department. A private investigation company or a private patrol company shall not conduct business under a fictitious name until the company has obtained the authorization for use of the name from the department. The department shall not authorize the use of a fictitious name that may generate public confusion with the name of a public officer or agency or the name of an existing private investigation company or private patrol company.

[16.48.1.13 NMAC - Re-pr, 16.48.1.13 NMAC, 09/24/08]

**16.48.1.14 DISPLAY OF LICENSE AND NOTIFICATION OF CHANGES:**

**A.** A license shall at all times be posted in a conspicuous place in the New Mexico principal place of business of the licensee.

**B.** A copy of the registration of each registrant employed by a private investigation company or a private patrol company shall be maintained in the main New Mexico office of the company and in the branch office in which the registrant works.

**C.** A registration card issued by the department shall at all times be in the possession of and located on the person of a registrant when working.

**D.** A security guard shall wear the registration card on the outside of the guard's uniform so that the card is visible to others.

**E.** A licensee, including owners, officers or directors of a private investigation company or a private patrol company, or a registrant shall notify the department immediately in writing of a change in the mailing or contact address of the licensee or registrant.

**F.** Failure to notify the department within thirty days of changes required to be reported pursuant to this section or failure to carry or display a registration as required is grounds for suspension of a license or registration.

[16.48.1.14 NMAC - Re-pr & A, 16.48.1.14 NMAC, 09/24/08]

**16.48.1.15 LOCAL REGULATIONS:** The provisions of the Private Investigations Act (61-27B-1 NMSA 1978) shall not prevent the local authorities of a city or county by ordinance and within the exercise of the police power of the city or county from imposing local ordinances upon a street patrol special officer or on a person licensed or registered pursuant to the Private Investigations Act if the ordinances are consistent with that act.

[16.48.1.15 NMAC - Re-pr, 16.48.1.15 NMAC, 09/24/08]

**HISTORY OF 16.48.1 NMAC:**

**Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

AG 68-1 (Rule No. IV), Private Patrol Operator Licenses, filed 4-3-68.

AG 68-2 (Rule No. V), Private Investigator Licenses, filed 4-3-68.

AG 69-2 (Rule No. VII), Private Investigators Licenses: Titles, filed 9-17-69.

AG 70-2 (Rule No. VII), Private Investigators: Fictitious Names and Titles, filed 8-20-70.

AG 69-3 (Rule No. VIII), Private Investigator Licenses: Interview of Applicant, filed 9-17-69.

AG 70-3 (Rule No. VIII), Private Investigators: Interview of Applicant, filed 8-20-70.

AG 70-5 (Rule No. X, Private Investigators: Alcohol Beverages, filed 8-20-70.

AG 70-7 (Rule No. XII), Private Investigators: Deputy Sheriff Commissions, filed 11-19-70.

AG 70-8 (Rule NO. XIII), Private Investigators: Cessation of Licensed Business, filed 11-19-70

NMLEA Rule #30, Bureau of Private Investigators: Rules and Regulations, filed 4-24-81.

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations, filed 11-4-83.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 6-1-81.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 5-27-83.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 6-1-81.

NMPA Rule 92-1, Authority, filed 8-17-92;

NMPA Rule 92-2, Definitions, filed 8-17-92;

NMPA Rule 92-11, Code of Ethics and Creed of Conduct, filed 8-17-92 and NMPA Rule 92-13, Savings Clause, filed 8-17-92

(by NM Polygraph Advisory Board).

**History of Repealed Material:**

NMLEA B/PI Rule #1 (filed 11/04/1983), repealed 03/07/08.

NMPA Rule 92-1 (filed 8/17/1992); NMPA Rule 92-2 (filed 8/17/1992); NMPA Rule 92-6 (filed 8/17/1992); NMPA Rule 92-11 (filed 8/17/1992); and NMPA Rule 92-13 (filed 8/17/1992), all repealed 03/07/08.

This rule expired on July 5, 2008 which was 120 days after its emergency filing on March 7, 2008. The Uniform Licensing Act (Subsection A of Section 61-1-30 NMSA 1978) stipulates that emergency rules cannot remain in effect for more than 120 days unless they are replaced by permanent rules.

**Other History:**

Those applicable portions of NMLEA B/PI Rule #1 (filed 11/04/1983); NMPA Rule 92-

1 (filed 8/17/1992); NMPA Rule 92-2 (filed 8/17/1992); NMPA Rule 92-6 (filed 8/17/1992); NMPA Rule 92-11 (filed 8/17/1992); and NMPA Rule 92-13 (filed 8/17/1992), renumbered, reformatted, and replaced by 16.48.1 NMAC, Private Law Enforcement Practitioners - General Provisions, effective 03/07/08.

16.48.1 NMAC, Private Law Enforcement Practitioners - General Provisions (filed 3/7/08) was replaced by 16.48.1 NMAC, Private Law Enforcement Practitioners - General Provisions, effective 09/24/08.

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 2 REQUIREMENTS  
FOR LICENSURE**

**16.48.2.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.  
[16.48.2.1 NMAC - Re-pr, 16.48.2.1 NMAC, 09/24/08]

**16.48.2.2 SCOPE:** All individuals and business entities that apply for licensure under the Private Investigations Act.  
[16.48.2.2 NMAC - Re-pr, 16.48.2.2 NMAC, 09/24/08]

**16.48.2.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-7, 61-27B-8, 61-27B-9, 61-27B-10, 61-27B-11, 61-27B-12, 61-27B-13, 61-27B-14, 61-27B-15, 61-27B-16, 61-27B-17, 61-27B-18, 61-27B-19, 61-27B-24, 61-27B-31 & 61-27B-35.  
[16.48.2.3 NMAC - Re-pr, 16.48.2.3 NMAC, 09/24/08]

**16.48.2.4 DURATION:** Permanent.  
[16.48.2.4 NMAC - Re-pr, 16.48.2.4 NMAC, 09/24/08]

**16.48.2.5 EFFECTIVE DATE:** September 24, 2008 unless a later date is cited in the history note at the end of a section.  
[16.48.2.5 NMAC - Re-pr & A, 16.48.2.5 NMAC, 09/24/08]

**16.48.2.6 OBJECTIVE:** To establish the procedures and outline the documents and information necessary to

complete the application process for licensure.

[16.48.2.6 NMAC - Re-pr, 16.48.2.6 NMAC, 09/24/08]

**16.48.2.7 DEFINITIONS:**

Please refer to 16.48.1.7 NMAC in addition to the definitions within this part.

**A.** "Armored vehicle security guard" means an individual employed by an armored car company whose primary duty is that of guarding the tangible property, currency, valuables, jewelry, food stamps, or other high value items of higher or unusual value, which require secured delivery from one place to another and who wears, carries, possesses, or has immediate access to a firearm at any time in the performance of the individual's duties.

**B.** "Chemical agents" means tear gas or any other non-lethal chemical agents used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**C.** "Defensive impact tools" means straight baton, expandable baton, side handle baton or other defensive impact tools used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**D.** "Electronic non-lethal devices" means tasers or other devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

**E.** "Restraint and control devices" means handcuffs or similar devices used for the intent to restrain and control unruly or combative subjects for the purposes of safety to the security officer and the public.

[16.48.2.7 NMAC - Re-pr & A, 16.48.2.7 NMAC, 09/24/08]

**16.48.2.8 BOND AND GENERAL LIABILITY INSURANCE REQUIREMENT:**

**A.** All private investigators, private patrol operators and private investigation companies seeking to obtain or retain a license under the provisions of the Private Investigations Act shall file with the department and retain in full force and effect, a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department.

**B.** The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services or the owner or the chief executive office of a private patrol company shall maintain a general liability

certificate of insurance in the amount of not less than one million dollars (\$1,000,000).

**C.** A surety bond in the amount of ten thousand dollars (\$10,000) or a general liability certificate of insurance executed and filed with the department pursuant to the Private Investigations Act shall remain in force until the surety company issuing the bond or the certificate has terminated future indemnity by notice to the department.

**D.** Any failure to furnish and maintain such bond in such form shall be grounds for denial or revocation of any license of a private investigator, private patrol operator, or private investigation company.

**E.** In the event a bond is offered which varies from the department form the department shall determine whether bond is in substantial conformance with the Private Investigations Act and department rules.

**F.** The duration of each bond shall, unless sooner terminated in accordance with law, be for the term of the term of the license issued as set forth on the face thereof and thirty (30) days thereafter.

**G.** Such bond shall also be filed and maintained for each period of renewal of license and the duration thereof shall be for the renewal period specified on the face of the license and thirty (30) days thereafter.

**H.** Any claim filed or made against any private investigator, private patrol operator, or private investigation company shall be reported by him forthwith to his surety company.

**I.** Upon receipt of notice of any claim made against any private investigator, private patrol operator, or private investigation company the surety company bonding such private investigator, private patrol operator, or private investigation company shall forthwith report the same to the department.

**J.** All complaints filed, judgments rendered or injunctions issued, whether temporary or final, against any private investigator, private patrol operator, private investigation company or his surety company shall be reported to department, within ten (10) days after receipt of the same by such private investigator, private patrol operator, private investigation company, surety company, or their agents, attorneys, or employees, together with the name of the court where filed and the name and address of the attorney for claimant, or the claimant if he has no attorney.

**K.** A private investigator or private patrol operator or private investigation company or licensee or registrant shall furnish the department with any information requested by the department pur-

suant to a claim or complaint or suit filed alleging a violation of any rule or statute governing private investigators, private patrol operators, private investigation companies, licensees or registrants when requested to do so by the department. Failure to comply with this request may result in disciplinary action. No payment may be made by a surety company pursuant to a claim or complaint filed with the department unless the department directs such payment to be made.

**L.** The failure to furnish such notice of claims or suits or such information shall be deemed sufficient to revoke or suspend any license of a private investigator, private patrol operator or private investigation company or to deem any bond for such private investigator, private patrol operator or private investigation company insufficient.

**M.** The department may determine that any claim made or suit filed against any private investigator, private patrol operator or private investigation company has reduced the amount of the bond of such investigator, patrol operator or private investigation company in full force and effect to such extent as the department shall, in it's discretion, determine. Any judgment obtained against any private investigator or private patrol operator or private investigation company or his surety company shall be deemed to reduce the amount of his bond in full force and effect by the amount of the judgment. In the event the amount of the bond in full force and effect shall be so reduced, such private investigator or private patrol operator or private investigation company shall, within ten (10) days, file a new or supplemental bond sufficient to meet the requirements of law as to the amount of bond in full force and effect.

**N.** If any claim is made or suit filed against any private investigator or private patrol operator or private investigation company for his actions, or the actions of any of his employees, and any portion of such act or acts as a private investigator or private patrol operator or private investigation company took place or occurred during the period for which a bond was in force, such surety shall be deemed liable for the whole of such claim to the extent of the total amount of the bond, provided that if more than one bond was in effect during the performance of all or any part of such acts, the liability shall be pro-rated among such sureties.

[16.48.2.8 NMAC - Re-pr & A, 16.48.2.8 NMAC, 09/24/08]

**16.48.2.9 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE**

**INVESTIGATOR LICENSE:**

**A.** The department shall issue a license as a private investigator to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) a surety bond in the amount of ten thousand dollars (\$10,000) executed by a surety company authorized to do business in this state on a form prescribed by the department; however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance in the amount not less than one million dollars (\$1,000,000) in lieu of the surety bond required by the provisions of this paragraph; and

(5) proof of experience that has been acquired within the five (5) years preceding the filing of the application with the department which shall consist of not less than 6,000 hours of actual work performed in:

(a) investigation for the purpose of obtaining information with reference to a crime or wrongs done or threatened against the United States;

(b) investigation of persons;

(c) the location, disposition or recovery of lost or stolen property;

(d) the cause or responsibility for fire, losses, motor vehicle or other accidents or damage or injury to persons or property; or

(e) securing evidence to be used before a court, administrative tribunal, board or investigating committee or for a law enforcement officer.

**B.** Years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from employers on a form provided by the department and shall be subject to independent verification by the department as it deems warranted. In the event of inability of applicants to supply such written certifications from employers in whole or in part, applicants may offer other written certifications from others than employers covering the same subject matter for consideration by the department. The burden of proving necessary experience is on the

applicant.

**C.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashier's check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional license until an applicant's background check has been successfully completed.

**D.** Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC.

[16.48.2.9 NMAC - Re-pr & A, 16.48.2.9 NMAC, 09/24/08]

**16.48.2.10 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATION COMPANY LICENSE:**

**A.** The department shall issue a license for a private investigation company to a person that files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(2) a surety bond in the amount of ten thousand dollars (\$10,000); however, private investigators who provide personal protection or bodyguard services shall maintain general liability insurance as specified in the Private Investigations Act in lieu of the surety bond required by the provisions of this paragraph; a private investigator or private patrol operator holding a certificate of deposit or surety bond prior to

July 1, 2007 in the sum of two thousand dollars (\$2,000) shall be exempt from the bond provisions of the Private Investigations Act, provided that the private investigator's or private patrol operator's license remains current and the holder remains in good standing with the regulation and licensing department;

(3) proof of an owner or a licensed private investigations manager who is licensed as a private investigator and who certifies that they will manage the daily operations of the private investigation company;

(4) proof of a physical location in New Mexico where records are maintained and made available for department inspection; and

(5) proof of a New Mexico registered agent if the applicant is a private investigation company located outside of New Mexico.

**B.** The owner or the chief executive officer of a private investigation company that provides personal protection or bodyguard services shall provide proof of an active and current general liability certificate of insurance in the amount of no less than one million dollars (\$1,000,000).

**C.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashier's check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional license until an applicant's background check has been successfully completed.

[16.48.2.10 NMAC - Re-pr & A, 16.48.2.10 NMAC, 09/24/08]



**16.48.2.11 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS MANAGER LICENSE:**

The department shall issue a license for a private investigations manager to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

A. proof of a current license in good standing as a private investigator;

B. proof of successfully passing a jurisprudence examination to be administered by the department; and

C. proof of employment with the private investigation company that the applicant is being licensed to manage.

[16.48.2.11 NMAC - Re-pr & A, 16.48.2.11 NMAC, 09/24/08]

**16.48.2.12 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE INVESTIGATIONS EMPLOYEE LICENSE:**

A. On or after July 1, 2007, every individual who seeks employment or is currently employed as a private investigations employee or who provides services on a contract basis to a private investigation company shall file an application for registration as a private investigations employee with the department.

B. The department shall issue a registration for a private investigations employee to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(3) proof of a high school diploma or its equivalent;

(4) proof of successfully passing a jurisprudence examination to be administered by the board;

(5) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check; and

(6) proof of employment or contract with a private investigation company

to provide investigation services for, a private investigation company, under the direct control and supervision of a private investigator.

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashier's check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional license until an applicant's background check has been successfully completed.

D. Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC.

[16.48.2.12 NMAC - Re-pr & A, 16.48.2.12 NMAC, 09/24/08]

**16.48.2.13 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATOR LICENSE:**

A. The department shall issue a license for a private patrol operator to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(3) proof of successfully passing a jurisprudence examination to be adminis-

tered by the department;

(4) proof of experience of actual work performed as a security guard consisting of not less than 4,000 hours of actual work performed as a guard, watchman, or patrolman or an equivalent position, one year of which shall have been in a supervisory capacity; the experience shall have been acquired within five (5) years preceding the filing of the application with the department; years of qualifying experience and the precise nature of that experience shall be substantiated by written certification from the applicant's employers and shall be subject to independent verification by the department as it determines is warranted; the burden of proving necessary experience is on the applicant; and

(6) proof of being firearm certified as required by 16.48.4.8 NMAC, if the position will require being armed with a firearm.

B. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashier's check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional license until an applicant's background check has been successfully completed.

C. Proof of successfully completing mandatory firearms training required by 16.48.4.8 NMAC.

[16.48.2.13 NMAC - Re-pr & A, 16.48.2.13 NMAC, 09/24/08]

**16.48.2.14 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL COMPANY LICENSE:**

A. The department shall

issue a license for a private patrol company to a person who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(2) proof of an owner or a licensed private patrol operations manager who certifies they will manage the daily operations of the private patrol company;

(3) proof of a physical location in New Mexico where records are maintained and made available for department inspection; and

(4) proof of a New Mexico registered agent if the applicant is a private patrol company located outside of New Mexico.

**B.** The owner or the chief executive officer of a private patrol company shall provide proof of a current and active general liability certificate of insurance in an amount not less than one million dollars (\$1,000,000).

**C.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check. A legal business entity must submit a fingerprint packet for each owner, and officers or directors.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashiers check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional license until an applicant's background check has been successfully completed.

[16.48.2.14 NMAC - Re-pr & A, 16.48.2.14 NMAC, 09/24/08]

**16.48.2.15 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A PRIVATE PATROL OPERATIONS MANAGER LICENSE:**

The department shall issue a license for a private patrol operations manager to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

**A.** proof of a current license in good standing as a private patrol operator or a registration as a level three security guard;

**B.** proof of successfully passing a jurisprudence examination to be administered by the department; and

**C.** proof of employment with the private patrol company that the applicant is being licensed to manage.

[16.48.2.15 NMAC - Re-pr & A, 16.48.2.15 NMAC, 09/24/08]

**16.48.2.16 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A POLYGRAPH EXAMINER LICENSE:**

**A.** The department shall issue a license as a polygraph examiner to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least 18 years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(3) proof of a high school diploma or its equivalent;

(4) proof of graduation from an accredited polygraph examiners course approved by the department; and

(6) proof of:

(a) completing a probationary operational competency period and passing an examination of ability approved by the department to practice polygraphy; or

(b) proof of holding, for a minimum of two (2) years immediately preceding the date of application, a current active license to practice polygraphy in another jurisdiction whose standards are equal to or greater than those in New Mexico; the applicant must have no pending disciplinary actions and no formal disciplinary actions issued against the license in the last five (5) years.

**B.** Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a license in New Mexico shall be required to

be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashiers check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional license until an applicant's background check has been successfully completed.

[16.48.2.16 NMAC - Re-pr & A, 16.48.2.16 NMAC, 09/24/08]

**16.48.2.17 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL ONE:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level one security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months.

**B.** The department shall issue a registration for a level one security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least eighteen (18) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) two (2) completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check;

(3) proof of successfully passing a jurisprudence examination to be administered by the department; and

(4) proof of completing a department approved training program as defined in Subsection D of 16.48.2.17 NMAC prior

to being placed on a guard post for the first time as a level one security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent; or

(c) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent.

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance, reinstatement or renewal of a registration in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashier's check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional registration until an applicant's background check has been successfully completed.

D. The following eight hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level one registration:

(1) legal training for security guards - four (4) hours;

(a) legal responsibilities, qualifications, restrictions and liability of level 1 security guard;

(b) introduction to use of force

continuum, appropriate use of force and de-escalation techniques;

(b) powers of detention and New Mexico laws of citizen arrest;

(c) appropriate search and seizure, legal restrictions and civil liability;

(d) New Mexico laws on trespass;

(2) authority and responsibility of the security guard - two (2) hours;

(a) communication with local law enforcement, jurisdiction and limitations of authority;

(b) radio dispatch protocol and other communication tools;

(c) image, professional communication, note-taking and report writing;

(3) incident scene management and preservation - two (2) hours;

(a) identifying evidence;

(b) care and handling of evidence;

(c) securing the immediate area;

(d) evidence tampering and/or removal;

(e) witness/participant identification.

E. Training may consist of an in-person instructor and prerecorded material.

[16.48.2.17 NMAC - Re-pr & A, 16.48.2.17 NMAC, 09/24/08]

#### **16.48.2.18 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL TWO:**

A. On or after July 1, 2007, every individual seeking employment or employed as a level two security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months. Endorsements to carry a specific weapon, not including a firearm, will require successful completion of the specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

B. The department shall issue a registration for a level two security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of a current registration in good standing as a level one security guard or proof of completing department approved level one security guard training;

(2) proof of successfully passing a jurisprudence examination to be administered by the department;

(3) proof of a high school diploma or its equivalent; and

(4) proof of completing a department approved training program as defined

in Subsection D of 16.48.2.18 NMAC for level two security guard training prior to being placed on a guard post for the first time as a level two security guard; that training may be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act (21-23-1 NMSA 1978);

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent; and.

(5) proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC.

C. Pursuant to Section 61-27B-34 of the act, all applicants for initial issuance or reinstatement of a license in New Mexico shall be required to be fingerprinted to establish positive identification for a state and federal criminal history background check.

(1) Blank fingerprint cards shall be obtained from the department.

(2) 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 department, by a private agency or individual qualified to take and certify fingerprints, provided the agency submits to the department written authorization or proof of training from any of the agencies referenced in subparagraphs (a) and (b) above.

(3) Completed fingerprint cards shall be submitted to the department with a check, money order, cashier's check or credit card for the prescribed fee and made out to the private investigations advisory board.

(4) The department may issue a provisional registration until an applicant's background check has been successfully completed.

D. The following sixteen (16) hour curriculum is the minimum training required and must be completed within twelve months prior to application for security guard level two registration:

(1) legal and practical aspects of use of force and personal/employer liability - eight (8) hours;

(2) verbal and written communication and conflict management - six (6) hours;

(3) first responder basic first aid - two (2) hours.

**E.** An applicant for weapon endorsement must successfully complete training for each specific weapon endorsement. The training must be taught by a department approved instructor that has been recommended by the board and approved by the superintendent. The following are the available endorsements for level two applicants:

(1) four (4) hour chemical agents training shall include, but not be limited to the following subjects:

- (a) effects of chemical agents;
- (b) avoiding bad positions;
- (c) disengagement;
- (d) proper defensive positions;
- (e) shielding;
- (f) drawing techniques;
- (g) defense against moving

attacks;

- (h) spraying techniques;
- (i) using OC spray with light;
- (j) multiple opponent defense;
- (k) proper weapon retention and

disarming;

- (l) cautions and hazards;
- (m) recovery and decontamination;
- (n) functioning when contaminated;

ed;

- (o) storage and maintenance;

(2) eight (8) hour defensive impact tools training shall include, but not be limited to, the following subjects:

(a) moral and legal aspects of baton usage;

- (b) use of force;
- (c) baton familiarization and uses;
- (d) first aid for baton injuries;
- (e) fundamentals of baton

injuries;

- (f) stances and grips;
- (g) target areas;
- (h) defensive techniques;
- (i) control techniques;
- (j) arrest and control techniques;
- (k) skill practice;

(3) eight (8) hour electronic non-lethal device training shall include, but is not limited to, the following subjects:

- (a) technology overview ;
- (b) electrical and medical back-

ground;

(c) specifications how electronic non-lethal devices work;

- (d) practical hands-on training;
- (e) changing batteries and air car-

tridges;

- (f) firing drills;

(g) drive stun;

(h) tactical considerations;

(i) field applications

(j) safety considerations and associated risks; and

(k) how an electronic non-lethal device overrides the central nervous system;

(4) eight (8) hour restraint and control devices training shall include, but not be limited to, the following subjects:

(a) handcuffing nomenclature;

(b) daily maintenance and safety checks;

(c) applying and removing handcuffs;

(d) potentially uncooperative and uncooperative handcuffing;

(e) cuffing from control holds;

(f) handcuffing from standing and prone;

(g) dangers of positional asphyxia and excited delirium;

(h) standing a prone handcuffed subject;

(i) conflict resolution;

(j) handcuffing guidelines and best practice; and

(k) use of force and justification for handcuffing

**F.** To be an approved instructor to offer chemical agents, defensive impact tools, electronic non-lethal device or restraint and control devices weapon training an individual shall complete an application for approval on a form provided by the department. The application shall include, but not be limited to, all of the following information:

(1) the name, business address, and telephone number of the individual;

(2) proof of an associate of arts degree in the administration of justice or the equivalent thereof;

(3) proof of the specific weapon instructor certification issued by a federal, state, or local agency or one year of verifiable weapons training or training experience or the equivalent thereof to be reviewed and recommended by the board and approved by the superintendent;

(4) proof of a minimum of three (3) years experience as a private patrol operator, security guard or equivalent; and

(5) the applicable fee as prescribed by the superintendent.

[16.48.2.18 NMAC - Re-pr & A, 16.48.2.18 NMAC, 09/24/08]

#### **16.48.2.19 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SECURITY GUARD REGISTRATION: LEVEL THREE:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level three security guard

or level three armored vehicle security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six (6) months. Endorsement to carry a weapon, not including a firearm, will be granted upon successful completion of relevant and specific weapon curriculum as defined in Subsection E of 16.48.2.18 NMAC.

**B.** The department shall issue a registration for a level three security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) proof of a current registration in good standing as a level two security guard or proof of completing department approved level one and level two security guard training;

(3) proof of successfully passing a jurisprudence examination to be administered by the department;

(4) proof of a high school diploma or its equivalent;

(5) proof of completing a department approved training program as defined in Subsection C of 16.48.2.19 NMAC prior to being placed on a guard post for the first time as a level three security guard; that training must be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(6) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division;

(7) proof of level two weapon endorsement or proof of completing department approved weapon training as defined in Subsection E of 16.48.2.18 NMAC; and

(8) beginning on July 1, 2009, proof of successful completion of a psycho-

logical evaluation as prescribed by the department to determine suitability for carrying firearms.

**C.** The following sixteen (16) hour curriculum, with a minimum of four (4) hours dedicated to the laws pertaining to firearms and deadly physical force, is the minimum training required and must be completed within twelve months prior to application for security guard level three registration:

- (1) the five (5) firearms safety rules;
- (2) weapon manipulation;
- (3) types of sidearms
- (4) firearm retention and equipment;
- (5) firearm storage devices;
- (6) locking devices;
- (7) ammunition and storage;
- (8) training household members;
- (9) hazards of loaded firearms in the home;
- (10) mental conditioning and tactics;
- (11) weapon manipulation and marksmanship;
- (12) threat recognition and judgmental shooting;

(13) laws pertaining to firearms, deadly physical force and the exercise of the powers of arrest - mandatory four (4) hours minimum.

[16.48.2.19 NMAC - Re-pr & A, 16.48.2.19 NMAC, 09/24/08]

#### **16.48.2.20 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR A SPECIAL EVENT PERMIT:**

**A.** A private patrol company employing a nonresident security guard temporarily for a special event shall apply to the department for and may be issued a special event permit for each nonresident security guard qualified to be employed at the special event.

**B.** A special event permit is issued for a specific nonresident security guard and a specific special event and shall not be transferred to another security guard or used for a special event other than for the special event for which the permit is issued.

**C.** To be issued a special event permit, a private patrol company shall provide the department with a description of the special event, its location and the dates on which the temporary nonresident security guard will be employed to provide services at the special event. A special event permit shall bear the name of the private patrol company and contact information, the name of the nonresident security guard, the name of the special event for which it is issued, the dates of the special event and other pertinent information required by the depart-

ment.

**D.** A special event permit shall be issued only to an individual who qualifies for a level one or higher security guard registration and who:

- (1) is not a resident of New Mexico;
- (2) does not hold a registration as a security guard in New Mexico; and
- (3) meets other requirements specified by the department.

**E.** A special event permit requiring a security guard to carry a firearm shall only be issued to an individual who is qualified to be registered as a level three security guard.

**F.** It is a violation of the Private Investigations Act (61-27B-1 NMSA 1978) for a private patrol company to circumvent the registration process for permanent or long-term part-time employment of security guards through use of the provisions of this section.

[16.48.2.20 NMAC - Re-pr, 16.48.2.20 NMAC, 09/24/08]

#### **16.48.2.21 CESSATION OF LICENSE BUSINESS:**

A registrant or licensee subject to the Private Investigations Act who ceases to do business as a registrant or licensee before the registration or license expiration date shall submit written notice of cancellation of his license to the department within thirty (30) days of cessation of such business.

[16.48.2.21 NMAC - Re-pr & A, 16.48.2.21 NMAC, 09/24/08]

#### **16.48.2.22 GENERAL QUALIFICATIONS FOR REGISTRATION AND LICENSE OF APPLICANTS:**

**A.** Must be a citizen of the United States.

**B.** Cannot have been convicted of a felony offense, an offense involving dishonesty or an offense involving an intentional violent act or the illegal use or possession of a deadly weapon and has not been found to have violated professional ethical standards as defined by the department.

**C.** Must have reached the age of majority (18 years) or **twenty one (21) years if required by law or rule.**

[16.48.2.22 NMAC - Re-pr & A, 16.48.2.22 NMAC, 09/24/08]

#### **16.48.2.23 QUALIFICATIONS AND EXPERIENCE REQUIREMENTS FOR APPLICANTS FOR AN ARMORED VEHICLE SECURITY GUARD REGISTRATION: LEVEL THREE:**

**A.** On or after July 1, 2007, every individual seeking employment or employed as a level three armored vehi-

cle security guard shall file an application for registration with the department. The application shall include two (2) passport type photos taken within the prior six months.

**B.** The department shall issue a registration for a level three armored vehicle security guard to an individual who files a completed application on a form provided by the department, accompanied by the required fees and who submits the following:

(1) proof of age indicating applicant is at least twenty one (21) years of age (copy of birth certificate, driver's license, state issued identification card, or baptismal certificate);

(2) proof of successfully passing a jurisprudence examination to be administered by the department;

(3) proof of a high school diploma or its equivalent;

(4) proof of completing a department approved training program as defined in Subsection C of 16.48.2.20 NMAC prior to being placed on a guard post for the first time as a level three armored vehicle security guard; that training must be provided by:

(a) a public educational institution in New Mexico or an educational institution licensed by the higher education department pursuant to the Post-Secondary Educational Institution Act;

(b) an in-house training program provided by a licensed private patrol company using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(c) the New Mexico law enforcement academy; or

(d) any other department-approved educational institution using a curriculum approved by the department and taught by an instructor who has been reviewed and recommended by the board and approved by the superintendent;

(5) proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division;

(6) beginning on July 1, 2009, proof of successful completion of a psychological evaluation as prescribed by the department to determine suitability for carrying firearms.

**C.** The following forty (40) hour curriculum is the minimum training required and must be completed within twelve (12) months prior to application for armored vehicle security guard level three registration:

(1) the armored vehicle security guard in New Mexico;

(2) legal issues for the armored

vehicle security guard in New Mexico;

(3) armored security operations;

(4) emergency situations;

(5) safe driver training.

[16.48.2.23 NMAC - N, 09/24/08]

#### 16.48.2.24 RECIPROCITY:

**A.** An investigator licensed in another state may conduct business in New Mexico only under the circumstances indicated below:

(1) the investigation must be initiated in the investigator's home state;

(2) the investigator may spend no more than thirty (30) days per case while conducting an investigation in another state;

(3) the investigator is prohibited from soliciting business while in another state and from establishing a business or setting up residence while conducting an investigation in that state.

**B.** An applicant for licensure or registration by reciprocity may not engage in the practice of private investigations, private patrol operator, polygraph examiners or security guard in New Mexico until approval for licensure by reciprocity has been given and the department has issued an initial license.

**C.** Acceptance of a reciprocity applicant for licensure or registration is subject to department approval. All applicants for licensure or registration by reciprocity shall:

(1) be of good moral character;

(2) be duly and currently licensed or registered in at least one other state;

(3) have no history of disciplinary action within the last five (5) years against any professional license or registration;

(4) provide proof of having met education and experience requirements in the state of licensure similar to or better than those required in New Mexico.

[16.48.2.24 NMAC - N, 09/24/08]

#### HISTORY OF 16.48.2 NMAC:

##### Pre-NMAC History:

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

AG 68-1 (Rule No. IV), Private Patrol Operator Licenses, filed 4-3-68.

AG 68-2 (Rule No. V), Private Investigator Licenses, filed 4-3-68.

AG 69-2 (Rule No. VII), Private Investigators Licenses: Titles, filed 9-17-69.

AG 70-2 (Rule No. VII), Private Investigators: Fictitious Names and Titles, filed 8-20-70.

AG 69-3 (Rule No. VIII), Private Investigator Licenses: Interview of Applicant, filed 9-17-69.

AG 70-3 (Rule No. VIII), Private Investigators: Interview of Applicant, filed 8-20-70.

AG 70-5 (Rule No. X, Private Investigators: Alcohol Beverages, filed 8-20-70.

AG 70-7 (Rule No. XII), Private Investigators: Deputy Sheriff Commissions, filed 11-19-70.

AG 70-8 (Rule NO. XIII), Private Investigators: Cessation of Licensed Business, filed 11-19-70

NMLEA Rule #30, Bureau of Private Investigators: Rules and Regulations, filed 4-24-81.

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations, filed 11-4-83.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 6-1-81.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 5-27-83.

NMPA Rule 92-3, Qualifications for Licensure, filed 8-17-92.

NMPA Rule 92-6, Unauthorized Practice, filed 8-17-92.

#### History of Repealed Material:

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations (filed 11-4-83); NMPA Rule 92-3, Qualifications for Licensure (filed 8-17-92); and NMPA Rule 92-6, Unauthorized Practice (filed 8-17-92) all repealed 03/07/08.

This rule expired on July 5, 2008 which was 120 days after its emergency filing on March 7, 2008. The Uniform Licensing Act (Subsection A of Section 61-1-30 NMSA 1978) stipulates that emergency rules cannot remain in effect for more than 120 days unless they are replaced by permanent rules.

#### Other History:

Those applicable portions of NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations (filed 11-4-83); NMPA Rule 92-3, Qualifications for Licensure (filed 8-17-92); and NMPA Rule 92-6, Unauthorized Practice (filed 8-17-92) renumbered, reformatted, and replaced by 16.48.2 NMAC, Requirements for Licensure, effective 03/07/08.

16.48.2 NMAC, Requirements for Licensure (filed 3/7/08) was replaced by 16.48.2 NMAC, Requirements for Licensure, effective 09/24/08.

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT PRIVATE INVESTIGATIONS ADVISORY BOARD

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 48 PRIVATE LAW ENFORCEMENT PRACTITIONERS PART 3 STANDARDS OF PRACTICE

**16.48.3.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.3.1 NMAC - Re-pr, 16.48.3.1 NMAC, 09/24/08]

**16.48.3.2 SCOPE:** All individuals and business entities registered and licensed under the Private Investigations Act.

[16.48.3.2 NMAC - Re-pr, 16.48.3.2 NMAC, 09/24/08]

**16.48.3.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5,

[16.48.3.3 NMAC - Re-pr, 16.48.3.3 NMAC, 09/24/08]

**16.48.3.4 DURATION:** Permanent

[16.48.3.4 NMAC - Re-pr, 16.48.3.4 NMAC, 09/24/08]

**16.48.3.5 EFFECTIVE DATE:** September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.3.5 NMAC - Re-pr & A, 16.48.3.5 NMAC, 09/24/08]

**16.48.3.6 OBJECTIVE:** To establish uniform standards of practice.

[16.48.3.6 NMAC - Re-pr, 16.48.3.6 NMAC, 09/24/08]

**16.48.3.7 DEFINITIONS:** Refer to 16.48.1.7 NMAC

[16.48.3.7 NMAC - Re-pr, 16.48.3.7 NMAC, 09/24/08]

**16.48.3.8 INTERVIEW OF APPLICANTS:** At the discretion of the department, any applicant for license or registration may be required to present himself for interview prior to approval of his application.

[16.48.3.8 NMAC - Re-pr, 16.48.3.8 NMAC, 09/24/08]

**16.48.3.9 ALCOHOLIC BEVERAGES:**

**A.** Any uniformed registrant or licensee shall not consume alcoholic beverages or controlled substances while on duty.

**B.** When not in uniform, any registrant or licensee, while on duty, shall not consume alcoholic beverages or any controlled substance in such a manner as to adversely affect his performance under the capacity for which license or registration is issued.

[16.48.3.9 NMAC - Re-pr, 16.48.3.9 NMAC, 09/24/08]

**16.48.3.10 DEPUTY SHERIFF COMMISSIONS:**

**A.** No licensee subject to the Private Investigators Act shall require any employee, as a condition or requirement of the employee's hiring or continued employment, to obtain a deputy sheriff's commission from any county sheriff, or to obtain a similar commission from any federal, state or local law enforcement agency.

**B.** No licensee subject to the Private Investigators Act nor any of his employees shall, during the pursuit of his licensed activities, display any deputy sheriff's or similar commission or badge issued pursuant to that commission in a manner likely to cause confusion between the licensed business and any city, local, federal or state police organization, or any branch of the United States military.

[16.48.3.10 NMAC - Re-pr, 16.48.3.10 NMAC, 09/24/08]

**16.48.3.11 FICTITIOUS NAMES AND TITLES:**

**A.** Fictitious names under which licensees conduct businesses shall not contain words which may foster confusion with city, local, state or federal law enforcement agencies, such as "police".

**B.** The terms, "police", "sheriff", "peace officer", or "law enforcement", shall not be used as part of any business name and shall not be displayed or used on business cards, stationary, advertisements, badges, uniforms, emblems, insignia or identification. No person licensed or required to be licensed under this act shall in any way give the impression that he is connected with the federal government, state government or any political subdivision of a state government.

[16.48.3.11 NMAC - Re-pr, 16.48.3.11 NMAC, 09/24/08]

**16.48.3.12 UNIFORMS, INSIGNIA, AND BADGES:**

**A.** Uniforms worn by a registrant or licensee shall be of such design as not to be confused with uniforms worn by city, local or state police, or by any branch of the United States military. Insignia attached to the uniform of any registrant or licensee shall be of such design and placed in such manner as not to be confused with insignia attached to uniforms worn by city, local or state police, or by any branch of the United States military. A badge may be worn by a registrant or licensee only while such individual is in uniform and on duty.

**B.** A patch, at least 2 1/2" x 1/2", entitled "SECURITY" will be worn on the left upper sleeve.

**C.** An identifiable plate showing the name of the individual and the company will be worn by all uniformed per-

sonnel. Such identification will be placed on the individual's outermost garment and be clearly visible at all times.

**D.** All private patrol operators and company licensees shall furnish the department a complete description of their uniform and shall furnish full length color photographs of the front and each side view of the uniform. All photographs must be clear and legible and shall accurately depict the uniform. A printed form, furnished by the department, shall be submitted describing those features deemed pertinent.

[16.48.3.12 NMAC - Re-pr, 16.48.3.12 NMAC, 09/24/08]

**HISTORY OF 16.48.3 NMAC:****Pre-NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

AG 68-1 (Rule No. IV), Private Patrol Operator Licenses, filed 4-3-68.

AG 68-2 (Rule No. V), Private Investigator Licenses, filed 4-3-68.

AG 69-2 (Rule No. VII), Private Investigators Licenses: Titles, filed 9-17-69.

AG 70-2 (Rule No. VII), Private Investigators: Fictitious Names and Titles, filed 8-20-70.

AG 69-3 (Rule No. VIII), Private Investigator Licenses: Interview of Applicant, filed 9-17-69.

AG 70-3 (Rule No. VIII), Private Investigators: Interview of Applicant, filed 8-20-70.

AG 70-5 (Rule No. X, Private Investigators: Alcohol Beverages, filed 8-20-70.

AG 70-7 (Rule No. XII), Private Investigators: Deputy Sheriff Commissions, filed 11-19-70.

AG 70-8 (Rule NO. XIII), Private Investigators: Cessation of Licensed Business, filed 11-19-70

NMLEA Rule #30, Bureau of Private Investigators: Rules and Regulations, filed 4-24-81.

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations, filed 11-4-83.

**History of Repealed Material:**

NMLEA B/PI Rule #1 (filed 11/04/1983), repealed 3/7/08.

This rule expired on July 5, 2008 which was 120 days after its emergency filing on March 7, 2008. The Uniform Licensing Act (Subsection A of Section 61-1-30 NMSA 1978) stipulates that emergency rules cannot remain in effect for more than 120 days unless they are replaced by permanent rules.

**Other History:**

Those applicable portions of NMLEA B/PI Rule #1 (filed 11/04/1983) was renumbered,

reformatted, and replaced by 16.48.3 NMAC, Standards of Practice, effective 3/7/08.

16.48.3 NMAC, Standards of Practice (filed 3/7/08) was replaced by 16.48.3 NMAC, Standards of Practice, effective 09/24/08.

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 4 M A N D A T O R Y  
FIREARMS TRAINING**

**16.48.4.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.  
[16.48.4.1 NMAC - Re-pr, 16.48.4.1 NMAC, 09/24/08]

**16.48.4.2 SCOPE:** All individuals that apply for licensure and are authorized to carry a firearm under the Private Investigations Act.  
[16.48.4.2 NMAC - Re-pr, 16.48.4.2 NMAC, 09/24/08]

**16.48.4.3 S T A T U T O R Y AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-31.  
[16.48.3.3 NMAC - Re-pr, 16.48.4.3 NMAC, 09/24/08]

**16.48.4.4 D U R A T I O N :** Permanent.  
[16.48.4.4 NMAC - Re-pr, 16.48.4.4 NMAC, 09/24/08]

**16.48.4.5 EFFECTIVE DATE:** September 24, 2008 unless a later date is cited in the history note at the end of a section.  
[16.48.4.5 NMAC - Re-pr & A, 16.48.4.5 NMAC, 09/24/08]

**16.48.4.6 OBJECTIVE:** To establish the firearms training requirements necessary to apply for licensure.  
[16.48.4.6 NMAC - Re-pr, 16.48.4.6 NMAC, 09/24/08]

**16.48.4.7 DEFINITIONS:** Refer to 16.48.1.7 NMAC  
[16.48.4.7 NMAC - Re-pr, 16.48.4.7 NMAC, 09/24/08]

**16.48.4.8 M A N D A T O R Y**

**FIREARMS TRAINING:**

**A.** After July 1, 2007, any private investigator, a private patrol operator, a private investigations employee, a level three security guard or a private patrol operations employee may carry a firearm upon successful completion of the mandatory firearm training required by the department. Any licensee who carries a firearm on duty shall be required to provide proof of being firearm certified by an instructor recognized and certified by the New Mexico law enforcement academy or the national rifle association law enforcement activities division prior to carrying a weapon on duty, and annually thereafter.

**B.** The licensee will be required to qualify with the same type of weapon and caliber he will be carrying while on duty.

**C.** Specific course requirements and verification of completion forms will be posted on the board website and available on request from the board office. [16.48.4.8 NMAC - Re-pr & A, 16.48.4.8 NMAC, 09/24/08]

**HISTORY OF 16.48.4 NMAC:**

**Pre NMAC History:**

The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

AG 68-1 (Rule No. IV), Private Patrol Operator Licenses, filed 4-3-68.

AG 68-2 (Rule No. V), Private Investigator Licenses, filed 4-3-68.

AG 69-2 (Rule No. VII), Private Investigators Licenses: Titles, filed 9-17-69.

AG 70-2 (Rule No. VII), Private Investigators: Fictitious Names and Titles, filed 8-20-70.

AG 69-3 (Rule No. VIII), Private Investigator Licenses: Interview of Applicant, filed 9-17-69.

AG 70-3 (Rule No. VIII), Private Investigators: Interview of Applicant, filed 8-20-70.

AG 70-5 (Rule No. X, Private Investigators: Alcohol Beverages, filed 8-20-70.

AG 70-7 (Rule No. XII), Private Investigators: Deputy Sheriff Commissions, filed 11-19-70.

AG 70-8 (Rule No. XIII), Private Investigators: Cessation of Licensed Business, filed 11-19-70.

NMLEA Rule #30, Bureau of Private Investigators: Rules and Regulations, filed 4-24-81.

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations, filed 11-4-83.

**History of Repealed Material:**

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations (filed 11-4-83) repealed 03/07/08.

This rule expired on July 5, 2008 which was 120 days after its emergency filing on March 7, 2008. The Uniform Licensing Act (Subsection A of Section 61-1-30 NMSA 1978) stipulates that emergency rules cannot remain in effect for more than 120 days unless they are replaced by permanent rules.

**Other History:**

Those applicable portions of NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations (filed 11-4-83) renumbered, reformatted, and replaced by 16.48.4 NMAC, Mandatory Firearms Training, effective 03/07/08.

16.48.4 NMAC, Mandatory Firearms Training (filed 3/7/08) was replaced by 16.48.4 NMAC, Mandatory Firearms Training, effective 09/24/08.

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 5 FEES**

**16.48.5.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board.

[16.48.5.1 NMAC - Re-pr, 16.48.5.1 NMAC, 09/24/08]

**16.48.5.2 SCOPE:** All individuals and business registered and licensed under the Private Investigations Act.

[16.48.5.2 NMAC - Re-pr, 16.48.5.2 NMAC, 09/24/08]

**16.48.5.3 S T A T U T O R Y AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-20 NMSA 1978.

[16.48.5.3 NMAC - Re-pr, 16.48.5.3 NMAC, 09/24/08]

**16.48.5.4 D U R A T I O N :** Permanent.

[16.48.5.4 NMAC - Re-pr, 16.48.5.3 NMAC, 09/24/08]

**16.48.5.5 EFFECTIVE DATE:** September 24, 2008 unless a later date is cited in the history note at the end of a section.

[16.48.5.5 NMAC - Re-pr & A, 16.48.5.5 NMAC, 09/24/08]

**16.48.5.6 OBJECTIVE:** To establish fees to generate revenue adequate

to fund the cost of program administration as authorized under 61-27B-20.

[16.48.5.6 NMAC - Re-pr, 16.48.5.6 NMAC, 09/24/08]

**16.48.5.7 DEFINITIONS :**

[RESERVED]

[Refer to 16.48.1.7 NMAC]

**16.48.5.8 FEE SCHEDULE:**

**A.** All fees payable to the board are non-refundable.

**B.** Application fees:

(1) private investigator license \$200.00;

(2) private investigation company license \$200.00;

(3) private investigations manager license \$75.00;

(4) private investigations employee registration \$35.00;

(5) private patrol operator license \$200.00;

(6) private patrol company license \$200.00;

(7) private patrol operations manager license \$75.00;

(8) polygraph examiner license \$200.00;

(9) security guard level one \$15.00;

(10) security guard level two \$15.00;

(11) security guard level three \$15.00;

(12) special event permit \$200.00;

(13) branch office certificate \$50.00;

(14) inspection of public records request: regulation and licensing department standard rate;

(15) examination \$100.00;

(16) background fee \$29.25.

[16.48.5.8 NMAC - Re-pr & A, 16.48.5.8 NMAC, 09/24/08]

**HISTORY OF 16.48.5 NMAC:**

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 6-1-81.

NMLEA Rule #31, Bureau of Polygraphy: Rules and Regulations, filed 5-27-83.

NMLEA Rule #30, Bureau of Private Investigators: Rules and Regulations, filed 4-24-81.

NMLEA B/PI Rule #1, Bureau of Private Investigators: Rules and Regulations, filed 11-4-83.

NMPA Rule 92-8, Fee Schedule, filed 8-17-92.

**History of Repealed Material:** NMLEA B/PI Rule #1 (filed 11/04/83), repealed 03/07/08.

NMPA Rule 92-1 (filed 8/17/1992); NMPA



Rule 92-8 (filed 8/17/92).

This rule expired on July 5, 2008 which was 120 days after its emergency filing on March 7, 2008. The Uniform Licensing Act (Subsection A of Section 61-1-30 NMSA 1978) stipulates that emergency rules cannot remain in effect for more than 120 days unless they are replaced by permanent rules.

**Other History:**

Those applicable portions of NMLEA B/PI Rule #1 (filed 11/04/1983); NMPA Rule 92-1 (filed 8/17/1992); NMPA Rule 92-8 (filed 8/17/92) all replaced by 16.48.5 NMAC, Fees, effective 03/07/08.

16.48.5 NMAC, Fees (filed 03/07/08) was replaced by 16.48.5 NMAC, Fees, effective 09/24/08.

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 6 CONTINUING EDU-  
CATION**

**16.48.6.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board. [16.48.6.1 NMAC - N, 09/24/08]

**16.48.6.2 SCOPE:** This part applies to the licensees and registrants. [16.48.6.2 NMAC - N, 09/24/08]

**16.48.6.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5, 61-27B-21 & 61-27B-26. [16.48.6.3 NMAC - N, 09/24/08]

**16.48.6.4 DURATION:** Permanent. [16.48.6.4 NMAC - N, 09/24/08]

**16.48.6.5 EFFECTIVE DATE:** September 24, 2008 unless a later date is cited in the history note at the end of a section. [16.48.6.5 NMAC - N, 09/24/08]

**16.48.6.6 OBJECTIVE:** The objective of Part 6 is to inform licensees of continuing education hours required for license renewal. Additionally, Part 16 established acceptable continuing education. [16.48.6.6 NMAC - N, 09/24/08]

**16.48.6.7 DEFINITIONS:** For purposes of continuing education requirements, "renewal period" shall mean the current one (1) year renewal period of July 1 thru June 30.

[16.48.6.7 NMAC - N, 09/24/08]

[Refer to 16.48.1.7 NMAC]

**16.48.6.8 CONTINUING EDUCATION:**

**A.** Continuing education is required for renewal of an individual license and registration.

**B.** Private investigators must complete a minimum of **four (4)** hours of continuing education training from an approved source, during the renewal period to maintain their license.

**C.** Security guards must complete a minimum of **four (4) hours** of continuing education training from an approved source, during the renewal period to maintain their license.

**D.** Polygraph licensees must complete a minimum of **twenty (20)** hours of continuing education training from an approved source, during the renewal period to maintain their license.

**E.** Proof of participation in or presentation of continuing education activity must be submitted with the license renewal request if the licensee is audited.

**F.** All continuing education hours must be earned during the current one (1) year renewal period of **July 1 thru June 30**; no carryover will be permitted.

**G.** Firearms requalification courses will not count towards mandatory training.

**H.** Approved sources for continuing education are:

(1) college level courses;

(2) in-house training provided by a private patrol company licensed by the department;

(3) the New Mexico law enforcement academy; or

(4) any other department-approved educational institution.

**I.** One hour of continuing education credit will be granted for each hour attended in a topic which directly relates to the performance of duties under the respective license. College level courses will be granted fifteen (15) hours of continuing education credit for each successfully completed college credit.

**J.** Completion of training courses required for initial licensing will satisfy the continuing education requirements for the first licensing period of an initial license.

**K.** No license or registration shall be renewed without proof of required continuing education credits.

[16.48.6.8 NMAC - N, 09/24/08]

**HISTORY OF 16.48.6 NMAC:**  
[RESERVED]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
PRIVATE INVESTIGATIONS  
ADVISORY BOARD**

**TITLE 16 OCCUPATIONAL  
AND PROFESSIONAL LICENSING  
CHAPTER 48 PRIVATE LAW  
ENFORCEMENT PRACTITIONERS  
PART 7 LICENSE RENEWAL,  
INACTIVE STATUS AND REIN-  
STATEMENT**

**16.48.7.1 ISSUING AGENCY:** Regulation and Licensing Department, Private Investigations Advisory Board. [16.48.7.1 NMAC - N, 09/24/08]

**16.48.7.2 SCOPE:** This part applies to the licensees and registrants. [16.48.7.2 NMAC - N, 09/24/08]

**16.48.7.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Private Investigations Act, Section 61-27B-5, 61-27B-21 & 61-27B-26. [16.48.7.3 NMAC - N, 09/24/08]

**16.48.7.4 DURATION:** Permanent. [16.48.7.4 NMAC - N, 09/24/08]

**16.48.7.5 EFFECTIVE DATE:** September 24, 2008 unless a later date is cited in the history note at the end of a section. [16.48.7.5 NMAC - N, 09/24/08]

**16.48.7.6 OBJECTIVE:** This part establishes the procedures for license expiration and license renewal. [16.48.7.6 NMAC - N, 09/24/08]

**16.48.7.7 DEFINITIONS:** Refer to 16.48.1.7 NMAC [16.48.7.7 NMAC - N, 09/24/08]

**16.48.7.8 LICENSE AND REGISTRATION RENEWAL:** Licensees and registrants shall renew their licenses issued pursuant to the Private Investigations Act bi-annually by remitting to the board office a renewal fee, renewal application form provided by the board, completed fingerprint cards, a completed verification of fingerprints form, a notarized authorization for release of information form and the prescribed fee for a state and federal criminal history background check. Renewal documents must be postmarked no later than the

expiration date or a late fee will be assessed without exception. Continuing education hours shall be documented as described in Part 6.

[16.48.7.8 NMAC - N, 09/24/08]

**16.48.7.9 LICENSE RENEWAL DEADLINE:** Licenses shall be renewed before July 1.

[16.48.7.9 NMAC - N, 09/24/08]

**16.48.7.10 LICENSE RENEWAL NOTICES:** Renewal notices will be mailed to each current licensee and registrant at least thirty (30) days prior to the expiration date of the license.

[16.48.7.10 NMAC - N, 09/24/08]

**16.48.7.11 LICENSEE RESPONSIBILITY:** Renewal notices will be mailed to the last known address on file with the board. It is the responsibility of the licensee and registrant to keep the board informed of any changes in address and phone numbers. Failure to receive the renewal application notice shall not relieve the licensee or registrant of the responsibility of renewing his license before the expiration date.

[16.48.7.11 NMAC - N, 09/24/08]

**16.48.7.12 APPROVAL OF RENEWAL APPLICATION:** Upon department approval of the renewal application, the department will issue a renewal to the licensee or registrant.

[16.48.7.12 NMAC - N, 09/24/08]

**16.48.7.13 INACTIVE STATUS:**

**A.** A licensed or registered person in good standing may request up to five (5) years of inactive status by notifying the department in writing before the expiration of their current license.

**B.** An inactive status license or registration may be restored within the five (5) year period upon receiving a completed reinstatement application, which shall be provided by the department.

**C.** A completed reinstatement application must include the appropriate reinstatement fee, two current passport type photographs and a completed fingerprint package.

**D.** A license or registration not restored within five (5) years is automatically expired without notice from the board or department.

[16.48.7.13 NMAC - N, 09/24/08]

**16.48.7.14 REINSTATEMENT OF LICENSE:**

**A.** Reinstatement of a license or registration that has expired for more than five (5) years, but less than ten (10) requires the following:

(1) completion of a new license

application relevant to the license or registration in expired status;

(2) payment of late fee;

(3) payment of the application fee;

(4) submission of a completed fingerprint package; and

(5) passage of the jurisprudence examination.

**B.** A license or registration that has been expired for more than ten (10) years must apply as a new licensee or registrant and meet all the current requirements for licensure or registration.

[16.48.7.14 NMAC - N, 09/24/08]

**HISTORY OF 16.48.7 NMAC:**  
[RESERVED]

## NEW MEXICO SECRETARY OF STATE

This is an amendment to 1.10.12 NMAC, Sections 6, 7, 9, 10, 11, 12, 13, 14, 15 and 18, effective September 15, 2008.

**1.10.12.6 OBJECTIVE:** The Absent Voter Act (Sections 1-6-1 through 1-6-18 NMSA 1978) hereinafter referred to as the act was enacted by Laws 1969, Chapter 240, Section 127. Pursuant to the New Mexico Constitution, Art. IV, Section 23, the act was amended by Laws 1999, Chapter 267, Laws 2001, Chapter 58, Laws 2003, Chapter 357 and Laws 2005, Chapter 270. The purpose of the act is to allow voters to vote twenty-eight (28) days prior to an election on paper ballots ~~or~~ by mail or on paper ballots on voting systems in person at the office of their county clerk or to vote in person at an alternate location or mobile alternate voting location established by the county clerk on paper ballots or a voting machine. The Absent Voter Precinct Act (Sections 1-6-19 through 1-6-25 NMSA 1978) was enacted by Laws 1969, Chapter 54, Section 1. The objective of this rule is to establish rules and regulations protecting the integrity, security and secrecy of the absentee ballot.

[1.10.12.6 NMAC - N, 3-31-2000; A, 4-30-02; A, 7-15-03; A, 4-28-06; A, 9-15-08]

**1.10.12.7 DEFINITIONS:**

**A.** “Absentee ballot” means a method of voting by ballot, accomplished by a voter who is absent from ~~his~~ the voter’s polling place on election day.

**B.** “Absentee ballot registrar” means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant’s precinct; whether the applicant is a voter, federal

voter, qualified federal elector or an overseas citizen voter; and the date and time of receipt of the ballot.

**C.** “Absentee voting daily report” means a form prescribed and approved by the office of the secretary of state consisting of the voting machine serial number, beginning public counter number, ending public counter number, beginning protective counter number, ending protective counter number, closing seal number and daily total number of voters per machine. It shall contain a signature line for the county clerk or authorized deputy and a line for the date.

**D.** “Alternate location” means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot and includes mobile alternate voting locations.

**E.** “Application” means an absentee ballot application, prescribed by the secretary of state.

**F.** “Ballot” means a paper ballot card used on an optical scan vote tabulating machine or direct recording electronic voting system.

**G.** “Blank ballot” means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

**[G] H.** “Challenger” means a voter of a precinct in that county to which he is appointed as challenger.

**[H] I.** “County canvassing board” means the board of county commissioners in each county (Section 1-13.1 NMSA 1978).

**[I] J.** “Direct recording electronic voting system” means one that records votes by means of a ballot display provided with electro-optical devices that can be actuated by the voter, that processes the data by means of a computer program, and that records ballot images in internal memory devices. It produces a tabulation of the voting data as a hard copy or stored in a removable memory device.

**[J] K.** “Election” means any special statewide election, general election, primary election or special elections to fill vacancies in the office of United States representative and regular or special school district elections.

**[K] L.** “Early voter” means a voter who votes in person before election day, and not by mail.

**[L] M.** “Election cycle” means the period of time commencing at 7:00 a.m. on the day of the general election until 7:00 p.m. on the day of the general election two (2) years subsequent.

**[M] N.** “Electronic vote tabulating (EVT) marksense voting system” or “optical scan vote tabulating system” means a voting system which records and

counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

**[N:] Q. “High-speed central count marksense ballot tabulator”** means a self-contained optical scan ballot tabulator, that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high-speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

**[O:] P. “Marksense ballot”** means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high speed central count marksense vote tabulator.

**[P:] Q. “Overvoted ballot”** means a ballot on which the voter has voted for more than the number of candidates to be elected for that office, or in both the affirmative and negative on a ballot question.

**[Q:] R. “Precinct board”** means the absent voter precinct board, who are appointed election officials pursuant to Section 1-6-24 NMSA 1978.

**[R:] “Provisional absentee voter”** means ~~an absentee voter who is required to submit identification pursuant to Subparagraphs (a) and (b) of Paragraph (4) of Subsection I of Section 1-4-5.1 or a voter whose name does not appear on the roster at an alternate location or mobile alternate voting location.~~

**S. “Required voter information”** means the forms of identification as specified in Section 1-1-24 NMSA 1978.

**T. “Undervoted ballot”** means a paper ballot that is not a blank ballot and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

**[S:] U. “Voter”** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the state of New Mexico.

**[T:] V. “Voting response area”** means the place on an absentee ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.12.7 NMAC - N, 3-31-2000; A, 4-30-02; A, 7-15-03; A, 4-30-04; A, 4-28-06; A, 9-15-08]

### 1.10.12.9 ABSENTEE VOTING:

A. A voter may vote absentee by:

(1) completing and subscribing an absentee ballot application, wherein the ballot is mailed to the residence or temporary residence of the voter; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter may mail or hand-deliver his ballot to the office of the county clerk only, or designate another individual to deliver the ballot pursuant to the Absentee Voter Act;

(2) completing and signing an absentee ballot application in the office of the county clerk; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter shall hand-deliver the ballot to the county clerk or designated deputy prior to leaving the office of the county clerk;

(3) completing and signing an absentee ballot application in the office of the county clerk twenty-eight (28) days prior to the election; the voter may cast his ballot on a paper ballot or direct recording electronic voting system or electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978;

(4) completing and signing an absentee ballot application at an alternate location or mobile alternate voting location established by the county clerk and voting on a direct recording electronic voting system or electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978; or

(5) requesting electronic transmission of an absentee ballot pursuant to the provisions of Section 1-6-4.1 NMSA 1978 or Subsection G of Section 1-6-5 NMSA 1978; only a federal qualified elector or overseas voter may transmit the ballot back to the county clerk by electronic transmission.

B. Upon receipt of the absentee ballot application from the voter, the county clerk or precinct board member shall review it for completeness. ~~[The county clerk shall verify the identity of the voter by using the last four digits of the voter’s social security number on the absentee application.]~~ When it is determined that the application is complete and that the applicant has a valid certificate of registration on file in that county, the county clerk or precinct board member shall mark the application “accepted” with the date and time of receipt and enter the required information in the absentee ballot register. If the applicant is voting absentee in-person, the county clerk or precinct board member shall instruct the voter on how to proceed to vote.

The county clerk or precinct board member shall ensure that the applicant votes before leaving the office of the county clerk or alternate location.

C. An absentee in-person voter who requests assistance may be assisted only by a person of the voter’s own choice, provided that the voter is visually impaired, physically disabled, unable to read or write, or a member of a language minority who has an inability to read well enough to exercise the elective franchise. The precinct board shall note the fact that the voter received assistance and the identity of the person providing the assistance.

D. For the purposes of absentee voting, electioneering is not permitted in the office of the county clerk alternate location, or mobile alternate voting location. Electioneering consists of any form of campaigning within one hundred (100) feet of the county clerk’s office or alternate location. Electioneering includes the display of signs ~~and/or~~ or campaign literature, campaign buttons, t-shirts, hats, pins, or other such items and includes the verbal solicitation of votes for a candidate or question.

E. Alternate locations shall be sited with respect to serving the convenience of the greatest number of voters, reducing travel time and to ensure a high level of voting system security.

F. An absentee voter who is required to present identification pursuant to the Election Code and has not done so at the time the voter’s ballot is mailed, shall be mailed instructions by the county clerk. The instructions shall inform the voter that failure to submit the required documents with the ballot may result in the ballot not being counted. The county clerk shall also instruct the voter not to place the required documents in the inner envelope with the ballot.

G. Receipt of electronically transmitted ballots pursuant to the provisions of Section 1-6-4.1 NMSA 1978 shall be by a standalone, non-networked computer, within the office of the county clerk. No electronically transmitted ballot materials shall be received in the office of the county clerk by any computer that is connected to the statewide voter file or other networks that may be damaged by the transmission of computer viruses or other programs that may damage existing systems.

[1.10.12.9 NMAC - N, 3-31-2000, A, 4-30-02; A, 7-15-03, A, 4-30-04; A, 4-28-06; A, 9-15-08]

**1.10.12.10 ABSENTEE PAPER BALLOTS:** Except as otherwise provided in Section 1-6-4.1 NMSA 1978 and the Uniformed and Overseas Citizens Absentee Voting Act, 1 U.S.C. Sections 101 et seq.,

there shall be one uniform paper ballot. No distinction shall be made between absentee ballots, emergency paper ballots, alternative, provisional or fail-safe ballots, except that the county clerk shall ~~[stamp the top portion of the ballot accordingly]~~ identify the type of ballot by checking the appropriate box when the ballot is issued. Ballot stubs may be color coded to differentiate between political parties in a primary election or ballot combinations in other elections.

[1.10.12.10 NMAC - N, 3-31-2000; A, 7-15-03; A, 4-30-04; A, 9-15-08]

#### **1.10.12.11 VOTING MACHINE BALLOT SECURITY:**

**A.** At least five days before the absentee voting period commences the county clerk shall prepare, inspect and seal any electronic voting machine in accordance with the specifications provided by the manufacturer and the provisions of state law.

**B.** One day before the absentee voting period commences, the county clerk shall certify to the secretary of state and all political party county chairs, in a primary, general election or special election for U.S. representative, the type and serial number of each voting machine used in the county for absentee voting. The certification shall be sent by facsimile to the bureau of elections at the office of the secretary of state.

**C.** Each electronic voting machine shall be situated within the office of the county clerk, alternate location or mobile alternate voting location in a physical location that best safeguards the secrecy of the vote and protects the security of the voting system. Only the voter or the person assisting the voter shall be allowed to enter the voting machine or handle the ballot while the voter votes.

**D.** The county clerk shall ensure that each voting machine located within the office of the county clerk or alternate location shall be secured by a lock and key. Each day during the absentee voting period, the county clerk or designated deputy shall, in the presence of one other employee of the county clerk or precinct board member, unlock the office where the voting machine is located. Similarly, at the close of regular office hours, the county clerk or designated deputy shall, in the presence of one other employee of the county clerk or precinct board member, lock the office where the voting machine is located. Immediately after unlocking or locking the office where the voting machine is located, the county clerk and the employee or precinct board member present shall sign or initial the absentee daily report. The report shall immediately be transmitted by facsimile means to the bureau of elections at the

office of the secretary of state. Absentee daily reports for a mobile alternate voting location shall be submitted for the previous day's activity on the next regular business day.

**E.** The county clerk shall prepare a list of those individuals that have authorized access to alternate locations or mobile alternate voting location. This list shall indicate those persons authorized as custodians of voting machine ~~[and/or]~~ or ballot box keys. A copy of this list shall be provided to the office of the secretary of state and, in a primary, general election or special election for U.S. representative, the chairs of each county's political parties.

**F.** Thirty (30) days prior to the beginning of early voting, a county clerk that establishes an alternate location or mobile alternate voting location shall notify the secretary of state of the dates, times and locations. The county clerk shall also submit a security plan which includes, but is not limited to, a method to secure that no voter who has cast a ballot at an alternate location or mobile alternate voting location may then cast a ballot at the voter's polling place on election day. Certificates of voting machine preparation for voting systems at alternate locations and mobile alternate voting locations shall be submitted to the secretary of state pursuant to Section 1-11-7 NMSA 1978.

**G.** The county clerk shall publicize the date, time of operation and location of any alternate location or mobile alternate voting location using media directed to, and appropriate for the voters of that area.

**H.** A county clerk may exercise the discretion to designate a mobile alternate voting location if the clerk deems it will assist voters in rural areas of the county. Mobile alternate voting locations shall be staffed by a precinct board consisting of a minimum of two registered voters of the county of different political parties or without political party affiliation. The county clerk shall ensure that each mobile alternate voting location has interpreters as may be required by state or federal law or federal consent decree.

[1.10.12.11 NMAC - N, 3-31-2000; A, 7-15-03, A, 4-30-04; A, 4-28-06; A, 9-15-08]

#### **1.10.12.12 ABSENTEE BALLOT BOX SECURITY:**

**A.** The county clerk or authorized deputy shall be the sole custodian of absentee ballot box keys and shall take all appropriate measures to provide for the security of such keys.

**B.** Absentee ballot boxes shall not be opened from the commencement of absentee voting until election day, except as provided by Section 1-6-11 NMSA 1978.

**C.** A county clerk shall provide separate absentee ballot boxes for each ~~[legislative district]~~ precinct.

**D.** Absentee ballot boxes shall be located in a physical location in the county clerk's office that best safeguards the security and secrecy of the ballot.

[1.10.12.12 NMAC - N, 3-31-2000; A, 4-28-06; A, 9-15-08]

#### **1.10.12.13 VOTE TABULATION:**

**A.** Any absentee in-person voter voting by electronic vote tabulating marksense voting system shall be instructed to mark and personally feed the ballot into the voting machine in order to record ~~[his or her]~~ the voter's vote. The absentee precinct board shall feed all absentee by-mail ballots into the voting machine in order to record the voter's vote.

~~[B. Electronic vote tabulating marksense voting systems shall be programmed to insure that no overvoted, blank, or misread ballots are accepted or scanned by the voting system. All such ballots shall be rejected by the tabulator and returned to the voter, if the voter is voting absentee in-person.]~~

~~[C.]~~ **B.** Any voter voting absentee by means of a direct recording electronic system shall be instructed on the use of the voting machine before the voter enters the machine. The voter shall be instructed to press the square to the right of the candidate name or question on which he or she desires to vote, and after all selections are made, the voter shall be instructed to press the vote button in the lower right hand corner of the voting machine to record each vote. The direct recording electronic voting system shall not be reactivated if the voter has pressed the cast vote button before completing all selections.

~~[D.]~~ **C.** Absentee votes cast on any voting device in the office of the county clerk twenty-eight (28) days prior to an election shall not be combined and counted with hand-delivered or mailed absentee ballots. A separate voting machine or voting machine cartridge shall be used to tabulate these ballots.

~~[E.]~~ **D.** Class A counties in possession of high-speed central count marksense ballot tabulators shall use such machines on election day in the tabulation of hand-delivered or mailed marksense absentee ballots.

~~[F.]~~ **E.** High-speed central count marksense vote tabulators used to tabulate marksense absentee ballots shall be programmed to tabulate ballots by precinct. [1.10.12.13 NMAC - N, 3-31-2000; A, 4-30-02; A, 7-15-03; A, 4-30-04; A, 9-15-08]

#### **1.10.12.14 O V E R V O T E D , [SPOILED AND] BLANK, MISREAD**

**AND UNDERVOTED BALLOTS:**

**A.** Electronic vote tabulating marksense voting systems shall be programmed to insure that no overvoted, blank, or misread ballots are accepted or scanned by the voting system, and that all undervoted ballots are accepted or scanned by the voting system. Overvoted, blank or misread ballots shall be rejected by the voting system and returned to the voter, if the voter is voting absentee in-person.

**[A-] B.** If an absentee in-person ballot is returned as overvoted, the overvoted ballot shall be spoiled and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and deposit the envelope into a ballot box. The voter shall then be issued a new ballot and be instructed to return to the voting booth and mark the ballot. Upon emerging from the voting booth the voter shall personally feed the ballot into the electronic vote tabulating marksense voting system.

**[B-] C.** If an absentee in-person ballot is misread, the voter shall be instructed to insert the ballot in a different orientation. If the ballot is misread again, the ballot will be spoiled and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and deposit the envelope into a ballot box. The voter shall then be issued a new ballot and be instructed to return to the voting booth and mark the ballot. Upon emerging from the voting booth the voter shall personally feed the ballot into the electronic vote tabulating marksense voting system.

**D.** If an absentee by-mail ballot that is overvoted, blank or misread is rejected when scanned by the voting system, it shall be fed a second time into the voting system which shall have been programmed to tabulate overvoted, blank, misread or undervoted ballots. Any absentee by-mail ballot that is rejected a second time shall be hand tallied by the absentee precinct board.

[1.10.12.14 NMAC - N, 3-31-2000; A, 9-15-08]

**1.10.12.15 ABSENTEE PRECINCT BOARDS:**

**A.** On election day, or pursuant to Section 1-6-11 NMSA 1978, prior to 7:00 a.m., the county clerk shall issue a receipt for all voting machines and ballot boxes to a special deputy county clerk. The receipt shall indicate the date and time the machine was removed from the office of the county clerk or alternate location, by whom, the serial number of the machine and the number of votes recorded on the machine. At 7:00 a.m. on election day, or pursuant to Section 1-6-11 NMSA 1978, a special

deputy county clerk shall deliver the electronic voting machines, all ballot boxes and the absentee ballot register to the absentee precinct board. The special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine, the number of votes recorded on the machine, the number of ballot boxes delivered and shall return such receipt to the county clerk for filing.

**B.** The county clerk shall issue red pencils to be used as writing instruments by the precinct board, except the presiding judge shall be issued an ink pen for the purpose of signing and filling out documents required by the Election Code. Precinct board members handling ~~and/or~~ or counting ballots shall have no other writing or marking instruments.

**C.** If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, precinct board members shall count the ballot only if the voter has marked a cross (X) or a check (✓) within the voting response area, circled the name of the candidate or both. A ballot shall also be counted when the voter, attempting to complete the arrow, has marked an arrowhead on the tail portion of the arrow in the voting response area. In no case, shall the precinct board mark or remark the ballot. In the instance of machine malfunction, the precinct board shall hand tally ballots.

**D.** Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or at an alternate location shall be counted by precinct.

**E.** Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period shall not be counted on the same voting system used for in-person voting at the office of the county clerk or on any voting system used at an alternate location.

**F.** The absentee precinct board shall tally alternative, replacement, presidential and federal ballots only after determination that the voter has not voted with an absentee ballot or in person as an early voter.

**G.** An absentee ballot without a signature on the outer envelope shall be rejected, pursuant to the provisions of the Election Code, however a signature shall not be rejected because it contains an abbreviated name, lack or middle initial or name, or lack of suffix, provided that the absentee precinct board can identify the voter with other information provided on the outer envelope.

[1.10.12.15 NMAC - N, 3-31-2000, A, 4-

30-02; A, 7-15-03, A 4-30-04; A, 4-28-06; A, 9-15-08]

**1.10.12.18 SECURITY FOR UNVOTED BALLOTS AT ALTERNATE VOTING LOCATION:**

**A.** On the first day of early/absentee voting at the alternate location, the county clerk or ~~his/her~~ the county clerk's authorized deputy shall deliver to the alternate voting location a storage box containing unvoted marksense ballots locked with two padlocks.

**B.** In the presence of the alternate voting location precinct board members, the county clerk or ~~his/her~~ the county clerk's authorized deputy shall open the storage box. The precinct board members and the county clerk or ~~his/her~~ the county clerk's authorized deputy shall complete an affidavit that verifies the number of ballots by style that were issued to that early/absentee alternate voting location. Those numbers shall be documented on the affidavit.

**C.** The county clerk shall distribute one key per judge for the padlocks on the storage box. One key shall be for one padlock and the other key for the other padlock. These judges shall be from different major political parties. The keys shall remain in their custody until the early/absentee voting period ends and then returned to the county clerk.

**D.** At the end of each day of early/absentee voting, the county clerk or ~~his/her~~ the county clerk's authorized deputy or the presiding judge and the two judges from different major political parties shall verify and document the number of the unvoted marksense ballots at the alternate location and place them in the storage box. The storage box shall be locked with the two padlocks by the two judges from different major political parties and placed in a locked room at the alternate location along with the early voting tabulator. The presiding judge, county clerk, or ~~his/her~~ the county clerk's authorized deputy shall have sole possession of the key to the locked room. If a location does not have a locked room, the county clerk shall provide a cabinet with a locking device to be placed on the site for the presiding judge to place the storage box.

**E.** At the beginning of each day until the final day of early/absentee voting at the alternate location, the county clerk, or ~~his/her~~ the county clerk's authorized deputy, or the presiding judge shall unlock the room. In the presence of the presiding judge, the judges from different major political parties who are in possession of the storage box keys shall open the padlocks on the storage box to retrieve the unvoted marksense ballots to be used at

that early/absentee voting location.

F. The beginning ballot number for that day must match the ending ballot number from the prior day. If it does not match, the county clerk must be notified immediately. No voting at that alternate location shall be allowed until the discrepancy has been resolved to the satisfaction of the county clerk.

G. ~~[On the final day of early/absentee voting after the last voter has voted, all unvoted marksense ballots shall be publicly destroyed.] Pursuant to Section 1-6-10 NMSA 1978, at 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of unused absentee ballots and shall publicly destroy in the county clerk's office all such unused ballots. A certificate of destruction ~~[must]~~ shall be completed, listing the quantity and numbers of ballot styles destroyed.~~

H. All voted marksense ballots shall remain in the voting tabulator except in accordance with 1.10.12.17 NMAC. [1.10.12.18 NMAC - N, 9-29-06; A, 9-15-08]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.4.9 NMAC, Section 10, effective 9/15/08.

### 3.4.9.10 ~~[ESTIMATED TAX; REASONABLE EXPECTATION~~

A. ~~Any corporation filing separately or any group of corporations filing on a combined or consolidated basis that has a liability of \$6,000 or more under the corporate income tax in either of the two immediately preceding taxable years is presumed to reasonably expect to have a corporate income tax liability of \$5,000 or more for the taxable year. The taxpayer may rebut the presumption by showing that liability in the two immediately preceding taxable years exceeded \$6,000 because of extraordinary events.~~

B. ~~Any corporation or group of corporations filing on a combined or consolidated basis which has a corporate income tax liability exceeding \$5,000 for a taxable year is presumed to have reasonably expected to owe estimated tax, unless the taxpayer demonstrates that the corporate income tax liability was the result of an extraordinary event or series of events which could not have been anticipated in the ordinary course of business planning. The fact that the taxpayer's normal business was more profitable than planned is not such an extraordinary event or series of events.~~

### C. ~~Example 1:~~

~~Corporation A, a calendar year filer, estimates at the beginning of a taxable year a taxable income of \$90,000 for the year, based on past experience and current revenue projections. This would generate a corporate income tax liability of \$4,320. Accordingly, A makes no estimated corporate income tax payments during the year. In December, the taxpayer liquidates a substantial portion of its assets in order to take advantage of a business opportunity unanticipated at the beginning of the year. As a result, the taxpayer realizes a capital gain and reports a total taxable income of \$140,000 and liability of \$6,720 on its corporate income tax return for the year. The taxpayer does not owe penalties or interest for failure to make estimated payments.~~

### D. ~~Example 2: Taxpayer~~

~~B, a calendar year filer, estimates at the beginning of a taxable year a taxable income of \$90,000 for the year, based on past experience and current revenue projections. This would generate a corporate income tax liability of \$4,320. Accordingly, B makes no estimated corporate income tax payments during the year. B's Christmas season sales are higher than forecast, resulting in a taxable income of \$140,000 and liability of \$6,720 for the taxable year. B owes penalty and interest for failure to make estimated payments. An increase in normal business activity is not an extraordinary event.] [RESERVED]~~

[1/15/98; 3.4.9.10 NMAC - Rn, 3 NMAC 4.9.10, 12/14/00; Repealed, 9/15/08]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.16.107 NMAC, Sections 7 through 13, effective 9/15/08.

### 3.16.107.7 ~~[DEFINITIONS:~~

~~"Bulk storage" means the storage of special fuel in any tank or receptacle, other than a supply tank of a motor vehicle, from which a user entitled to own, operate, utilize or maintain bulk storage may place special fuel into the supply tank of an allowable motor vehicle registered, owned or operated by that user. A tank or receptacle used for bulk storage may be above ground or below ground, may be stationary or mobile, and must have a minimum capacity of thirty-five (35) gallons of special fuel.] [RESERVED]~~

[2/1/93, 12/31/96; 3.16.107.7 NMAC - Rn, 3 NMAC 20.8.7, 6/14/01; Repealed, 9/15/08]

### 3.16.107.8 ~~[DELIVERY INTO SPECIAL BULK STORAGE:~~

### A. ~~Any delivery of special~~

~~fuel into a tank or receptacle with a capacity of less than thirty five (35) gallons is not delivery into special bulk storage. Even if the purchaser of the special fuel has a special bulk storage user permit and has presented the permit to the supplier or dealer, the provisions of Section 7-16A-8 NMSA 1978 do not apply and special fuel excise tax is due.~~

### B. ~~Any delivery of less~~

~~than thirty five (35) gallons of special fuel into a tank or receptacle with a minimum capacity of thirty five (35) gallons is a delivery into special bulk storage, provided the purchaser of the special fuel has a special bulk storage user permit and has presented the permit to the supplier or dealer.] [RESERVED]~~

[2/1/93, 12/31/96; 3.16.107.8 NMAC - Rn, 3 NMAC 20.8.8 & A, 6/14/01; Repealed, 9/15/08]

### 3.16.107.9 ~~[SPECIAL BULK STORAGE CONTAINERS TO BE LABELED:~~

~~A. Special fuel purchased under the provisions of Section 7-16A-8 NMSA 1978 shall be placed in containers which are labeled with the words "NON-HIGHWAY USE ONLY" in letters at least two (2) inches high. The label shall be permanently attached to the container and maintained so as to be clearly legible. If the container is underground, the required label must be displayed above ground at the point where special fuel is placed into the container and removed from the container, or if special fuel is placed into the container at one point and removed from the container at a different point, such a label must be placed at each point.~~

~~B. Special bulk storage containers so labeled may not be used for any purpose other than special bulk storage.~~

~~C. Any penalty imposed by the department for any violation of Section 3.16.107.9 NMAC will be presumed to apply both to the permittee and to the person filling the container.] [RESERVED]~~

[2/1/93, 12/31/96; 3.16.107.9 NMAC - Rn, 3 NMAC 20.8.9 & A, 6/14/01; Repealed, 9/15/08]

### 3.16.107.10 ~~["ALLOWABLE MOTOR VEHICLES" LIST TO BE MAINTAINED:~~

~~A. As part of the application for a special bulk storage user permit, each applicant is required to certify that the applicant will maintain a true and correct listing of all allowable motor vehicles which will consume special fuel from special bulk storage. The description, year, make, model and motor number, serial number or vehicle identification number of~~

~~each allowable motor vehicle shall be included on the list.~~

~~B. The list must be maintained in a manner that will allow verification by authorized employees of the Department that special fuel is consumed from special bulk storage only by allowable vehicles.~~

~~C. Upon notice and after a hearing as described in Section 3.16.107.13 NMAC, the department may suspend the special bulk storage user permit of any person who fails to maintain an allowable motor vehicle list.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.10 NMAC - Rn, 3 NMAC 20.8.10 & A, 6/14/01; Repealed, 9/15/08]~~

~~3.16.107.11 [SPECIAL BULK STORAGE USER PERMIT:~~

~~A. Any person who desires to purchase special fuel for bulk storage in accordance with Section 7-16A-8 NMSA 1978 shall apply for and obtain a permit from the department. An application for such a permit shall be on a form provided by the department, shall provide such statements and information as required and shall specify the maximum number of locations at which the applicant proposes to maintain special bulk storage.~~

~~B. All applications for a special bulk storage user permit shall be signed by the permittee in the case of an individual, a partner in the case of a partnership or an officer or authorized agent in the case of a corporation.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.11 NMAC - Rn, 3 NMAC 20.8.11 & A, 6/14/01; Repealed, 9/15/08]~~

~~3.16.107.12 [TAXABILITY OF DELIVERIES INTO SPECIAL BULK STORAGE: Notwithstanding any other provision of the Special Fuels Supplier Tax Act, all special fuel delivered into bulk storage under a special bulk storage user permit is subject to gross receipts tax. Should any special fuel be delivered from special bulk storage into the supply tank of an allowable motor vehicle, and that allowable motor vehicle is operated on the highways of this state, the special bulk storage user permit holder shall report that use on the report required under Section 7-16A-11 NMSA 1978 and pay any special fuel excise tax due.] [RESERVED]~~

~~[2/1/93, 12/31/96; 3.16.107.12 NMAC - Rn, 3 NMAC 20.8.12 & A, 6/14/01; Repealed, 9/15/08]~~

~~3.16.107.13 [SUSPENSION OF SPECIAL BULK STORAGE USER PERMIT:~~

~~A. Whenever the department has reason to believe any person has~~

~~violated any provision of the Special Fuels Supplier Tax Act or the regulations promulgated thereunder, the department shall schedule a hearing pursuant to the provisions of Section 7-1-24 NMSA 1978 of the Tax Administration Act to determine whether or not the person's special bulk storage user permit should be suspended.~~

~~B. The person shall be notified of the hearing. Notification shall inform the permittee of suspected violations of particular provisions of the Special Fuels Supplier Tax Act and shall briefly advise the permittee of the procedures employed in hearings and of remedies subsequent to the hearing if the permit is suspended. At the end of the hearing or within thirty (30) days thereafter, the department shall enter a written decision and order.~~

~~C. The department may schedule an informal conference with the person before holding the hearing.] [RESERVED] [2/1/93, 12/31/96; 3.16.107.13 NMAC - Rn, 3 NMAC 20.8.13 & A, 6/14/01; Repealed, 9/15/08]~~

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.16.109 NMAC, Sections 8 through 13, effective 9/15/08.

**3.16.109.8 CALCULATION OF SPECIAL FUEL EXCISE TAX LIABILITY:**

In computing the special fuel excise tax due, a special fuel excise tax taxpayer, in addition to the deductions provided in Section 7-16A-10 NMSA 1978, may deduct from the total amount of special fuel received in New Mexico during the tax period, the amount of special fuel sold or delivered when the receipt or use of the special fuel is subject to gross receipts tax under the provisions of 3.16.102.9 NMAC.

[2/1/93, 12/31/96, 12/31/97; 3.16.109.8 NMAC - Rn, 3 NMAC 20.10.8 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.8 NMAC - N, 9/15/08]

**3.16.109.9 PROOF SATISFACTORY TO THE DEPARTMENT:**

A. For exports on or after June 1, 1997, proof satisfactory to the department of the export of special fuel consists of a manifest or bill of lading showing the amount of special fuel, the name and address of the person to whom the special fuel is sold and delivered and the destination outside New Mexico. The person exporting special fuel must also comply with the requirements of Subsection A of Section 7-16A-10 NMSA 1978.

B. Proof satisfactory to the

department of sale to the United States or any agency or instrumentality thereof, a NATO force, the state of New Mexico (including its agencies, instrumentalities and political subdivisions), or an Indian nation, tribe or pueblo or any agency or instrumentality thereof shall be furnished to the department on request. Proof includes contracts covering the gallons purchased, the federal contract number, purchase orders and invoices showing that the purchaser was the United States, a NATO force, the state of New Mexico, or an Indian nation, tribe or pueblo or an agency or instrumentality thereof and copies of warrants issued in payment and other documentation determined by the secretary to constitute proof of payment.

C. Receipts from sales of special fuel placed in the supply tank of United States, state of New Mexico or Indian nation, tribe or pueblo government vehicles are deductible from the distributor's special fuel excise tax when paid for by a credit or procurement card issued to the United States government, the state of New Mexico or an Indian government.

D. Copies of all documents supporting deductible sales must be retained for at least three years from the end of the calendar year in which the special fuel was sold.

[2/1/93, 12/31/96, 12/31/97; 3.16.109.9 NMAC - Rn, 3 NMAC 20.10.9 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.9 NMAC - N, 9/15/08]

**3.16.109.10 DEDUCTION - SALES TO OTHER SUPPLIERS:**

A. Special fuel received by one supplier and sold to another supplier may not be deducted from the amount of special fuel received in New Mexico, even though the second supplier is registered, because the second supplier did not "receive" special fuel within the meaning of the act.

B. Example: A, a registered special fuel supplier in New Mexico, received one thousand (1,000) gallons of special fuel in June, 20xx. B, also a registered special fuel supplier, needed one thousand (1,000) gallons of special fuel and arranged to purchase the one thousand (1,000) gallons from A immediately after A had received the fuel. A may not deduct the one thousand (1,000) gallons from the amount of special fuel A received in June 20xx. B is not liable for tax on this special fuel because B did not receive it.

[2/1/93, 12/31/96; 3.16.109.10 NMAC - Rn, 3 NMAC 20.10.10 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.10 NMAC - N, 9/15/08]

**3.16.109.11 INDIRECT SALES TO THE UNITED STATES, THE**

**STATE OF NEW MEXICO, INDIAN NATIONS, TRIBES OR PUEBLOS OR FOR EXPORT:**

A. The tax consequences of sales of special fuel to the United States, the state of New Mexico, or Indian nations, tribes or pueblos or for export are illustrated by the following examples. These examples concern only the liability of the parties to the department and do not affect the obligation of any party to pay the price for the special fuel to the seller. The fact that the price may include an amount corresponding to the tax does not make that amount a tax on the purchaser or change the legal incidence of tax.

B. Example 1. X, a supplier, received one thousand (1000) gallons of special fuel in May 20xx, reported the special fuel excise tax and resold the special fuel to Y, a wholesaler. Y sold the special fuel to the United States. If Y furnishes proof satisfactory to the department to X, X may either deduct the one thousand (1000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's sale to the government is required to be retained by both X and Y for at least three years from the end of the calendar year in which the special fuel was sold to the United States.

C. Example 2. X, a supplier, received and reported one thousand (1000) gallons of special fuel in May, 20xx, and sold the special fuel to Y, a retailer. Y sold twenty (20) gallons to a United States government vehicle using a government credit card. In May, 20xx, Y reports to X that this amount of special fuel has been sold to the United States government. If Y furnishes proof satisfactory to the department to X, X may deduct twenty (20) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's sale to the United States government is required to be retained by X and Y for at least three years from the end of the calendar year in which the special fuel was sold.

D. Example 3: X, a supplier, received and reported five thousand (5,000) gallons of special fuel in May 20xx and resold the special fuel to Y, another New Mexico supplier. Y delivers the five thousand (5,000) gallons of special fuel to a customer in another state. If Y furnishes proof satisfactory to the department to X, X

may deduct five thousand (5,000) gallons from the amount of special fuel received in May, elect to take the deduction as a prior period adjustment in a subsequent reporting month in which special fuel excise tax is otherwise due, or if no special fuel excise tax is due, may claim a refund of the tax paid. Proof satisfactory to the department of Y's export is required to be retained by both X and Y for at least three years from the end of the calendar year in which the sale was made.

[2/1/93, 12/31/96; 3.16.109.11 NMAC - Rn, 3 NMAC 20.10.11 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.11 NMAC - N, 9/15/08]

3.16.109.12 **DEDUCTION - SALES TO A NON-UNITED STATES SIGNATORY OF THE NORTH ATLANTIC TREATY:**

A. For purposes of 3.16.109.12 NMAC:

(1) "NATO signatory" means a nation, other than the United States, that is a contracting party to the north Atlantic treaty;

(2) "NATO force" means any NATO signatory's military unit or force or civilian component thereof present in New Mexico in accordance with the north Atlantic treaty; and

(3) "member of a NATO force" means the military and civilian personnel of the NATO force and their dependents.

B. Pursuant to Article XI, Section 11 of the north Atlantic treaty, special fuel sold to a NATO force may be deducted from the total amount of special fuel received in New Mexico.

C. Pursuant to Article IX, Section 8 of the North Atlantic Treaty, special fuel sold to a member of a NATO force for the private use of that member and not for the use of the NATO force are not deductible and are subject to the special fuel excise tax.

D. 3.16.109.12 NMAC is retroactively applicable to sales on or after July 1, 1995.

[12/22/95, 12/31/96; 3.16.109.12 NMAC - Rn, 3 NMAC 20.10.12 & A, 6/14/01; Repealed, 10/31/07; 3.16.109.12 NMAC - N, 9/15/08]

3.16.109.13 **SPECIAL FUEL USED IN SCHOOL BUSES:** Receipts from the sale of special fuel dyed in accordance with federal regulations for use in school buses is subject to gross receipts tax and not the special fuel excise tax.

[3.16.109.13 NMAC - N, 10/15/02; Repealed, 10/31/07; 3.16.109.13 NMAC - N, 9/15/08]

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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  
COMMISSION OF PUBLIC  
RECORDS**

**Notice of Chapter Movement**

The State Records Administrator has approved the following NMAC restructuring. Chapter 8 entitled "Mine Safety" will be moved from Title 11 to Title 19 Chapter 6. This change will be effective on September 30, 2008. Please see the notice of renumbering under the Mining Safety Board for information regarding rule movement caused by this restructuring.

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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.