

**NEW  
MEXICO  
REGISTER**

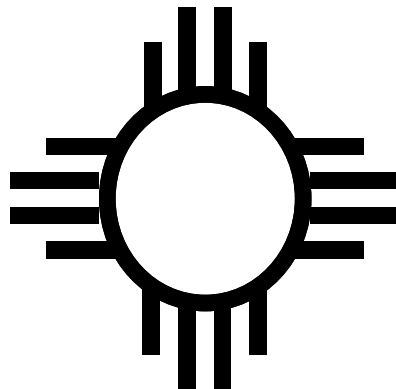


Volume XIX  
Issue Number 24  
December 31, 2008



# **New Mexico Register**

**Volume XIX, Issue Number 24  
December 31, 2008**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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# New Mexico Register

Volume XIX, Number 24

December 31, 2008

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### Adopted Rules

#### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

***A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered***

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

Public Accountancy Board  
Notice of Proposed Rulemaking

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Wednesday, February 4, 2009. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements

Notice of the hearing and Board meetings has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at [www.rld.state.nm.us/b&c/accountancy](http://www.rld.state.nm.us/b&c/accountancy). Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Friday, January 30, 2009; however the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Wednesday, January 28, 2009.

### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

On February 11, 2009, at 5:30 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM.

This hearing will address: A proposal to amend 20.11.2 NMAC, *Fees*, and to incorporate the complete and amended 20.11.2 NMAC, into the New Mexico State Implementation Plan for air quality (SIP). This hearing will also address a proposal to update the Title V Operating Permits Program by incorporating the aforementioned proposed amendments to 20.11.2 NMAC into the Title V Program where applicable.

Reasons for proposed regulatory change: 1. NMSA 74-2-7 requires the Air Board to include in its regulations: a schedule of emission fees consistent with the provisions of Section 502(b)(3) [which includes Section 502(b)(3)(a) and Section 507] of the 1990 amendments to the federal Clean Air Act ("Title V") NMSA 74-2-7(B)(7)]; 2. NMSA 74-2-7, *Permits*, requires the Air Board to include in its regulations a schedule of construction permit fees sufficient to cover the reasonable costs of: a) reviewing and acting upon any application for such (construction) permit; and (b) implementing and enforcing the terms and conditions of the permit, excluding any court costs or other costs associated with an enforcement action [NMSA § 74-2-7(B)(6)]; 3. The currently-effective version of 20.11.2 NMAC imposes fees that are not sufficient to sustain the cost of the air quality programs; and 4. The proposed amendments to 20.11.2 NMAC include Consumer Price Index adjustments to keep pace with changes in the economy and to make it unnecessary to request frequent amendments to 20.11.2 NMAC.

Following the combined hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to

consider adopting the proposed amendments to 20.11.2 NMAC, *Fees*, incorporating the complete and amended regulation into the SIP, and update the Title V Operating Permits Program.

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

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994, Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, *Rulemaking Procedures — Air Quality Control Board*.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on January 27, 2009, to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Room 3023, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office,

before 5:00pm on Wednesday, February 4, 2009. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [Jamend@cabq.gov](mailto:Jamend@cabq.gov) and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103 or electronically at [Jamend@cabq.gov](mailto:Jamend@cabq.gov) or by phone, 768-2601.

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

## ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

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

On **February 11, 2009 at 5:30 PM**, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers (City Council/County Commission Chambers) at the Albuquerque/Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM 87102.

The hearing will address a proposal to make minor language changes to the current 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*. On November 26 and 27, 2007, a joint hearing was held by the Air Board, the Environmental Improvement Board (EIB), the Air Quality Division (AQD) and New Mexico Environment Department (NMED) proposing two sets of regulations, one set of regulations each to their respective Boards. The regulations were adopted on November 27, 2007 and subsequently filed with the State Records

Center

Both the NMED's *Emission Standards for New Motor Vehicles* and the AQD's *Emission Standards for New Motor Vehicles* included some fleet wide averaging and accounting requirements. The current regulations can be interpreted to require separate averaging and accounting programs for Bernalillo County, which was not the intent of the regulations. The current regulations need minor language changes to clarify the intent to authorize statewide averaging and accounting programs administered by NMED for portions of the regulations.

AQD is petitioning the Air Board to adopt minor modifications to the language of its *Emission Standards for New Motor Vehicles* (20.11.104 NMAC) to clarify that certain program requirements are to be accomplished on a statewide basis. The proposed 20.11.104 NMAC incorporates the following: amending the definition of "State" (20.11.104.7 DD NMAC); substituting the word "State" for the word "Department" or "Bernalillo County" or adding the word "State" generally throughout the regulation, except when not applicable; proposing minor changes to Fleet Average Non-Methane Organic Gas Exhaust Emission Requirements and Reporting (20.11.104.104); proposing minor changes to Fleet Average Greenhouse Gas Exhaust Emissions and Reporting (20.11.104.107); and proposing minor changes to Recalls (20.11.104.110).

Following the hearing, the Air Board will convene its regular monthly meeting during which they are expected to consider a proposal to amend current 20.11.104 NMAC, *Emission Standards for New Motor Vehicles*.

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

Hearings and meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994, Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC,

*Rulemaking Procedures — Air Quality Control Board.*

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on January 27, 2009, to: Attn: Hearing Clerk, Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Room 3023, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00pm on Wednesday, February 4, 2009. The comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to [jamend@cabq.gov](mailto:jamend@cabq.gov) and shall include the required name and address information.

Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Ms. Janice Amend, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103 or electronically at [jamend@cabq.gov](mailto:jamend@cabq.gov) or by phone, 768-2601.

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

FAMILY SERVICES DIVISION

**NOTICE OF PUBLIC HEARING**

The Children, Youth and Families Department, Family Services, will hold a formal public hearing on January 12, 2009 from 1:30 p.m. to 3:30 p.m. in Apodaca Hall on the 2nd floor of the PERA Building located at 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding the repeal and replacement of regulation 8.8.7 NMAC, governing Court Ordered Domestic Violence Offender Treatment Programs.

The proposed replacement may be obtained by contacting Sophia Roybal-Cruz at 505-827-4591. Interested persons may testify at the hearing or submit written comments no later than 3:30 p.m. on January 2, 2009. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Sophia Roybal-Cruz, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-476-0225.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Ms. Roybal-Cruz at 505-827-4591. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

**NEW MEXICO  
ENVIRONMENT  
DEPARTMENT**

**NEW MEXICO ENVIRONMENT  
DEPARTMENT**

New Mexico Environment Department  
Notice of Public Hearing

The Secretary of the New Mexico Environment Department (NMED), or his appointed hearing officer, will hold a public hearing on March 11, 2009, at 9:00 a.m., in NMED's conference room at 1301 Siler Road, Building B, Santa Fe, NM 87507, for the purpose of hearing the Petroleum Storage Tank Bureau's proposal to adopt amendments to 20.5.17 NMAC (Corrective Action Fund Administration). The proposed amendments would streamline and reformat the rules to comply with NMAC requirements; improve the Bureau's ability

to effectively manage and maintain the solvency of the Corrective Action Fund (CAF); clarify existing and new departmental procedures for compliance determinations, contractor selection, workplan approval, approval of deliverables, submission of claims for payment, and applications for a zero or reduced deductible; conform the rules to existing Department forms; alleviate certain administrative burdens for owners, operators, and contractors; allow for the appointment of a designated representative to facilitate compliance with corrective action activities; expand administrative review opportunities to contractors and others; and increase the amounts paid for work performed by contractors and for use of certain field equipment.

Interested persons may review the proposed amendments during regular business hours at the NMED Petroleum Storage Tank Bureau, 1301 Siler Road, Building B, Santa Fe, NM; NMED's Albuquerque Field Office, 500 San Antonio Dr. NE, Albuquerque, NM; on NMED's website at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us); or by contacting Jennifer Pruett at (505) 476-4392 or [Jennifer.Pruett@state.nm.us](mailto:Jennifer.Pruett@state.nm.us).

The hearing will be conducted in accordance with 20.1.9 NMAC, Rulemaking Procedures – Environment Department; the Department of Environment Act, §9-7A-6 NMSA 1978; the Ground Water Protection Act, §74-6B-13 NMSA 1978; and other applicable procedures.

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

Persons having a disability and needing help to participate in this hearing process should contact Judy Bentley by January 30, 2009, at the NMED Human Resources Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM 87501, telephone 505-827-9872. TDY users may access her number via the New Mexico Relay Network at 1-800-659-8331.

The Secretary or appointed hearing officer may make a decision on the proposed amendments at the conclusion of the hearing or may issue a final decision within 60 days following the close of the record.

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT**  
INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the Cash Assistance Program. A public hearing to receive testimony on this regulation will be held on January 30, 2009 at 9:00 am. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The intent of this register is to insure the integrity of the Employment Retention cash assistance Program. Since implementation of this program pursuant to the 48<sup>th</sup> New Mexico Legislative Regular Session of 2007, additional language is required to maintain consistency. Additionally, the name of the program is being changed from Employment Retention Program to Transition Bonus Program as it is the goal of the program to transition NMW eligible persons into gainful employment.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisterPlansTax.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

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

You may send comments electronically to:  
[vida.tapia-sanchez@state.nm.us](mailto:vida.tapia-sanchez@state.nm.us)

**NEW MEXICO HUMAN  
SERVICES DEPARTMENT**  
INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the Cash Assistance Program. A public hearing to receive testimony on this regulation will be held on

January 30, 2009 at 10:00 am. The hearing will be held at the Income Support Division conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Personal Responsibility and Work Opportunity Reconciliation Act (herein called PRWORA) required that all parents or specified relative caretakers ensure that school age children attend school and maintain satisfactory attendance. The intent of the proposed regulations is to align current rules with the Code of Federal Regulations (CFR) and the New Mexico Works Act (NMWA).

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegistersPlansTax.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

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

You may send comments electronically to: [vida.tapia-sanchez@state.nm.us](mailto:vida.tapia-sanchez@state.nm.us)

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## NEW MEXICO MINING COMMISSION

### NOTICE OF RULE MAKING

#### NOTICE OF PUBLIC MEETING AND HEARING OF THE NEW MEXICO MINING COMMISSION

The New Mexico Mining Commission will hold a regular meeting and a public hearing at **9:00 A.M. Tuesday, February 17, 2009** in Porter Hall on the 1st floor of the Wendell Chino Building located at **1220 South Saint Francis Drive** in Santa Fe, NM.

During the meeting, the Mining Commission will conduct a public hearing on a petition for rulemaking submitted by the Mining and Minerals Division (MMD) on October 14, 2008 (**Petition 08-02**). The petition proposes to revise the following Mining Act Rules: fees, 19.10.2 NMAC; minimal impact operations, 19.10.3 NMAC; exploration, 19.10.4 NMAC; and financial assurance requirements, 19.10.12 NMAC. The proposed changes include an extension of the sunset date for fee collection, certain fee increases, and more detailed requirements for exploration operations including, in the case of minimal impact operations, limiting drill holes to twenty (20) and eliminating the financial assurance exemption. At the conclusion of the hearing, the Mining Commission may deliberate and take action on the petition. The Mining Commission will also consider other items on its agenda which may include a legislative update and the Mining Act Reclamation Program's annual report. In addition, the Commission may consider other issues that come before it.

The Commission's Guidelines for Rulemaking can be found at <http://www.emnrd.state.nm.us/MMD/NMMC/documents/guidelinesforrule-making.pdf>. Any person intending to present technical testimony at the public hearing must submit a notice of intent that identifies the party and the name of the technical witness, summarizes the testimony, includes any recommended modifications to the regulatory proposal and lists and describes all anticipated exhibits. Notices of intent to present technical testimony must be received by John Pfeil, Clerk of the Mining Commission, C/O Mining and Minerals Division, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505 not later than 5 p.m. **Monday, February 2, 2009** and should reference the petition number and the date of the hearing. Any member of the public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any person may submit a written statement at the hearing, or may file the written statement prior to the hearing to the address listed in this notice.

A copy of the petition and the proposed regulatory change can be obtained on the MMD website at <http://www.emnrd.state.nm.us/MMD/NMMC/NMMCPropRuleChanges.htm>.

or by contacting John Pfeil at 476-3400. Additionally, a copy of the draft agenda for the meeting/hearing will be available by February 2, 2009 on the same link or by contacting John Pfeil at 476-3400. If you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact John Pfeil at 476-3400 at least 48 hours prior to the hearing. Public documents can be provided in various accessible forms.

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**NEW MEXICO PUBLIC  
EDUCATION  
DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION  
DEPARTMENT**

EDUCATOR QUALITY DIVISION, PRO-  
FESSIONAL LICENSURE BUREAU

**NOTICE OF POSTPONEMENT**

BY NOTICE published in the December 1,  
2008, Issue No. 22, the Public Education

Department, Professional Licensure  
Bureau, announced it would conduct a pub-  
lic hearing on proposed rule amendments.  
The hearing was scheduled for January 7,  
2009 at 10:00 am, at the Educator Quality  
Division Office at 444 Galisteo, Suite A, in  
Santa Fe, NM.

**PLEASE BE ADVISED** that the hearing is  
postponed to the following date, time, and  
place:

DATE: April 29, 2009

TIME: The hearing will begin

at 10:00 a.m. and conclude at 12:00PM  
PLACE: Educator Quality  
Division Office, 444 Galisteo, Suite A.  
Santa Fe, NM 87501

This facility is accessible to persons with  
disabilities. The NMPED requests that per-  
sons who make oral comments at the hear-  
ing also submit a written copy of their testi-  
mony at the hearing. The proposed rule  
amendments will be available on the PED  
website at least 30 days prior to the public  
hearing.

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

The Public Education Department (“PED”) hereby gives notice that the PED will conduct a public hearing 10:00 A.M. to noon on April 29, 2009 at the office of the Educator Quality Division at 444 Galisteo, Suite A. in Santa Fe, New Mexico 87501.

<u>NMAC</u>	<b>Chapter Name</b>	<b>Part Name</b>	<b>Proposed Action</b>
6.60.3 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Alternative Licensure	Amend
6.62.2 NMAC	SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ADMINISTRATORS	Licensure for Educational Administration Grades Pre K -12	Amend
6.63.3 NMAC	SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY SUPPORT PERSONNEL	Licensure for Instructional Support Providers Pre -K12 Not Covered in Other Rules	Amend
6.63.4 NMAC	SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL	Licensure in Educational Diagnosis Pre K -12	Amend
6.63.6 NMAC	SCHOOL PERSONNEL - LICENSURE REQUIREMENTS FOR ANCILLARY AND SUPPORT PERSONNEL	Licensure for School Counselors, Pre K -12	Amend
6.64.11 NMAC	SCHOOL PERSONNEL - COMPETENCIES FOR LICENSURE	TESOL Competencies	Amend
6.69.4 NMAC	SCHOOL PERSONNEL - PERFORMANCE	Performance Evaluation System Requirements for Teachers	Amend
6.60.4 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Licensure Reciprocity	Amend
6.60.6 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Continuing Licensure	Amend
6.60.5 NMAC	SCHOOL PERSONNEL - GENERAL PROVISIONS	Competency Testing for Licensure	Amend
6.61.3 NMAC	SCHOOL PERSONNEL - SPECIFIC LICENSURE REQUIREMENTS FOR INSTRUCTORS	Licensure in Middle Level Education	Amend

Interested individuals may testify at the public hearing or submit written comments to Ms. Flo Martinez, Executive Administrative Assistant, Licensure Bureau, Educator Quality Division, Public Education Department, 444 Galisteo, Suite A. Santa Fe, NM 87501, by email [Florence.Martinez@state.nm.us](mailto:Florence.Martinez@state.nm.us) or Fax: 505-827-4148. Written comments must be received no later than 5:00 PM on April 29, 2009. However, the submission of written comments as soon as possible is encouraged. Written comments must provide specific reasons for any suggested amendments or comments and include any proposed amendatory language.

Copies of the proposed rules may be accessed on the Department’s website: [www.ped.state.nm.us](http://www.ped.state.nm.us) or obtained from Ms. Martinez as indicated in the previous paragraph by sending a self-addressed stamped envelope to Professional Licensure Bureau at 300 Don Gaspar Ave., Room 101 in Santa Fe, NM 87501. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the meeting are asked to contact Ms. Martinez by 5:00 PM on April 20, 2009. The Department requests at least ten (10) days advance notice to provide special accommodations. If accommodation is not requested in advance we cannot guarantee the availability of accommodation on-site.

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## Adopted Rules

### NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.2 NMAC, Section 9, effective 01/01/2009. This rule was also renumbered and reformatted from 21 NMAC 17.2 to comply with current NMAC requirements.

#### 21.17.2.9 FEES:

A. The annual fee for an inspection certificate shall be ~~[fifty dollars (\$50) plus one dollar fifty cents (\$1.50)]~~ seventy-five dollars (\$75) plus two dollars (\$2) per acre, except as provided for in Subsection A of 21.17.2.10 NMAC.

B. The annual fee for an inspection certificate for farmers markets or other grower cooperatives shall be seventy-five dollars (\$75) per location.

C. The annual license fee for a nursery or florist dealer, landscaper or agent shall be ~~[fifty dollars (\$50)]~~ seventy-five dollars (\$75).

D. The annual fee for a special dealer's license for persons who handle only vegetable or cactus plants shall be ~~[fifteen dollars (\$15)]~~ twenty-five dollars (\$25).

E. The annual fee for a special vegetable inspection certificate for persons who grow only vegetable plants shall be ~~[fifteen dollars (\$15)]~~ twenty-five dollars (\$25).

F. The annual fee for a collected plants permit shall be ~~[fifty dollars (\$50)]~~ seventy-five dollars (\$75).

G. Double fees required because of late renewal of licenses or permits described in Subsections A through F of 21.17.2.9 NMAC shall be twice the amount stated for the appropriate license or permit.

H. Once the appropriate document has been issued by the department, fees collected for licenses or permits are non-refundable.

I. Fees for licenses or permits may be paid by money order, personal check or cashier's check. Cash may be accepted only at the Las Cruces office of the department and only during business hours. Businesses or individuals who pay fees with personal checks that are later returned to the department because of insufficient funds or accounts closed shall make all future payments of fees with money orders, cashier's checks or cash. Fees and licenses are not transferable between individuals or businesses whether or not the businesses are owned by the same individual.

[7/1/97; 21.17.2.9 NMAC - Rn & A, 21

NMAC 17.2.9, 01/01/09]

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

This is an amendment to 7.20.11 NMAC, Sections 7 and 26, effective December 31, 2008.

#### 7.20.11.7 DEFINITIONS:

A. ABUSE means an intentional or negligent infliction of physical or psychological harm; intentional or negligent sexual contact or sexual exploitation; intentional or negligent behavior that jeopardizes life or health; torture, cruel confinement or corporal punishment.

B. ACCREDITED means written acknowledgement from a national organization that an agency or program meets the published standards of the organization issuing the accreditation.

C. ACCREDITED RESIDENTIAL TREATMENT CENTER (ARTC) means a facility with 16 beds or less that may be attached to, or housed within, a hospital or other institution; that provides residential treatment services pursuant to these requirements; and that is accredited by JCAHO.

D. ACTION PLAN means a written document that may be required by the licensing and certification authority (LCA) detailing an agency's proposed actions for resolving deficiencies identified by the LCA.

E. ACTIVE STATUS means a type of certification granted to a program currently serving clients.

F. ADMINISTRATOR means the person in charge of the day-to-day operation of an agency. The administrator may also be referred to as the director or operator.

G. ADMISSIONS HOLD means a type of sanction under which a program is prohibited from admitting new clients until the LCA determines that identified deficiencies are corrected, and lifts the sanction.

H. ADVANCE DIRECTIVES means an optional component of the comprehensive service plan. An individual has the right to make decisions in advance, including behavioral health treatment decisions, through a process called advance directive. An advance directive can be used to state the individual's treatment choices, preferences or instructions regarding precursor crisis strategies, or can be used to name a health care agent that is someone

that will make health care decisions for the individual. This section of the comprehensive service plan provides the individual the opportunity to take part in behavioral health care decisions if at some point in the future the individual is unable. This document allows the individual to express consent or refusal to medications and other health care decisions, including use of the seclusion and restraints.

[~~H~~] I. AGENCY means the legally responsible organizational entity administering the facility [~~and/or~~] or program(s) of specific services identified and certified pursuant to these certification requirements.

[~~I~~] J. ASSISTANCE WITH SELF-ADMINISTRATION OF MEDICATION means the supervision and assistance given to a client in the self-administration of a drug.

K. BEHAVIORAL HEALTH ASSESSMENT means an assessment by an integrated series of procedures conducted with an individual to provide the basis for the development of an effective, comprehensive and individualized treatment plan.

[~~J~~] L. BEHAVIORAL HEALTH SERVICES means services designed to meet behavioral [~~and/or~~] and mental health [~~and/or~~] and substance abuse needs of medicaid recipients in certified services.

[~~K~~] M. BEHAVIOR MANAGEMENT means the use of basic techniques, such as reinforcement, redirection [~~and/or~~] and voluntary time-outs to teach clients skills for managing and improving their own behavior; [~~and/or~~] and the use of verbal de-escalation, therapeutic holds, personal restraint [~~and/or~~] and seclusion in order to maintain a safe and therapeutic environment and to enhance the abilities of clients and care givers to manage client behavior.

[~~L~~] N. BEHAVIOR MANAGEMENT SKILLS DEVELOPMENT SERVICES (BMS) means services provided on a staff-to-child ratio of at least 1:1. Behavior management skills development services are for children and adolescents with psychological, emotional, behavioral, neurobiological or substance abuse problems in the home, community [~~and/or~~] or school when such problems are of such severity that highly supportive and structured therapeutic behavioral interventions are required. These services are designed to maintain the client in his/her home, community or school setting.

[~~M~~] O. BEHAVIOR MANAGEMENT SERVICES PLAN means a service plan used in behavior management

skills development services.

~~[N-]~~ P. CANCELLATION means an LCA action nullifying a program's certification.

~~[O-]~~ Q. CAPACITY means the maximum number of clients allowed to receive services in a licensed facility at any specified time in accordance with these certifications requirements.

~~[P-]~~ R. CASE MANAGEMENT SERVICES means services provided in order to assist children and adolescents with identifying and meeting multiple and complex, special physical, cognitive and behavioral health care needs through planning, securing, monitoring, advocating and coordinating services.

~~[Q-]~~ S. CARF means council on accreditation of rehabilitation facilities.

~~[R-]~~ T. CERTIFICATION means an authorized status conferred by the department on a program that meets these certification requirements for providing service(s) to children and adolescents.

U. CERTIFIED FAMILY SPECIALISTS (CFS) means an individual 18 years of age or older who has personal experience navigating any of the child or family-serving systems or advocating for family members who have a knowledge of and are involved with the behavioral health systems and are certified by an approved state of New Mexico certification program.

V. CERTIFIED PEER SPECIALISTS (CPS) means a self-identified current or former consumer, 18 years of age or older, of mental health or substance abuse services and has at least one year of mental health or substance abuse recovery and is certified as a CPS by an approved state of New Mexico certification program.

~~[S-]~~ W. CHEMICAL RESTRAINT means the administration of a medication(s) which is neither a standard treatment for the client's medical or psychiatric condition nor a part of the client's daily medication regimen, and is used for the primary purpose of controlling a client's behavior or restricting a client's freedom of movement.

~~[T-]~~ X. CHILD/ADOLESCENT means a person under the chronological age of 21 years.

~~[U-]~~ Y. CLEARED STAFF MEMBER means an individual who has been approved by the department for employment in the immediate presence of children and adolescents by means of a state and federal criminal background clearance.

~~[V-]~~ Z. CLIENT means any child or adolescent who receives treatment from a service certified by the department.

~~[W-]~~ AA. COA means council on accreditation for children and family services.

~~[X-]~~ AB. CLINICAL STAFF means licensed mental health prac-

tioners and treatment coordinators.

~~[Y-]~~ AC. CLINICAL SUPERVISOR means a staff member who is a licensed independent practitioner and who has responsibility and authority for supervising other clinical staff.

AD. COMMUNITY SUPPORTS means the coordination of resources to individuals/families necessary for them to implement strategies to promote recovery, rehabilitation and resilience.

AE. COMMUNITY SUPPORT WORKER (CSW) means the primary staff responsible for assisting the client and family with implementation of the comprehensive service plan and coordinating or facilitating family and treatment team meetings and is certified by an approved state of New Mexico certification program.

~~[Z-]~~ AF. COMPREHENSIVE COMMUNITY SUPPORT SERVICES (CCSS) ~~[coordinates and provides services and resources to adolescents and family members to promote recovery, rehabilitation and resiliency. CCSS identifies and addresses the barriers that impede the development of skills necessary for independent functioning in the community as well as strengths that may aid the adolescent and family in the recovery or resiliency process]~~ means a variety of interventions, primarily face-to-face and in community locations that address barriers that impede the development of skills necessary to independent functioning in the community. It provides assistance with identifying and coordinating services and supports identified in an individual's comprehensive service plan; supporting an individual and family in crisis situations; and providing individual interventions to develop or enhance an individual's ability to make informed and independent choices. The target population for CCSS includes children, youth and adults with significant behavioral health disorders and who meet other criteria as identified by the collaborative.

~~[AA-]~~ AG. CONTRACTOR means an individual who provides direct services to clients through contracts with the agency.

~~[AB-]~~ AH. CORPORAL PUNISHMENT means a form of discipline or behavior control that involves forced exercise or touching a child's body with the intent to induce pain and includes, but is not limited to, shaking, spanking, hitting, hair pulling, ~~and/or~~ and ear pulling.

~~[AC-]~~ AI. CRIMINAL RECORDS CHECK (CRC) means the process of submitting state and FBI approved fingerprint cards and any additional required background information to the department for the purpose of determining whether or not an individual has state or federal convictions on record that may dis-

qualify the individual from direct unsupervised contact with children/adolescents and, when applicable, for the purpose of obtaining and reviewing a record of convictions.

~~[AD-]~~ AJ. CRIMINAL RECORDS CLEARANCE means a determination made by the department, based on the results of the criminal records check, that an individual may work directly and unsupervised with children and adolescents.

AK. CRISIS MANAGEMENT SERVICES means those services identified in the individual's crisis plan. Such services are located in the community, include natural supports and are available to the client and family after the agency's normal operating hours.

AL. CRISIS PLAN means a component of the comprehensive service plan that clearly identifies the level of intensity and severity of potential crisis events and how they will be managed after normal business hours with specific resources identified for the client, family and natural supports. The crisis plan shall include defined client, family and treatment team roles and activities.

AM. CULTURAL COMPETENCE means the involvement, integration and transformation of knowledge, information and data about individuals and groups of people into specific clinical standards, service approaches, techniques and marketing programs. Cultural competence is illustrated by congruent behaviors, attitudes and policies that match a client's culture to increase the quality and appropriateness of behavioral health care and outcomes.

AN. CULTURALLY COMPETENT ASSESSMENT means the relevant cultural considerations in the assessment of the behavioral health needs of a client.

~~[AE-]~~ AO. DAY TREATMENT SERVICES (DTS) means a coordinated and intensive set of structured individualized therapeutic services, in a school, or a facility licensed by the LCA, provided for children, adolescents and their families who are living in the community.

~~[AF-]~~ AP. DEFICIENCY means a violation of, or failure to comply with, a provision(s) of these certification requirements.

~~[AG-]~~ AQ. DENIAL means a sanction imposed by the LCA to refuse to issue a certification, based on a determination made by the LCA.

~~[AH-]~~ AR. DEPARTMENT means the New Mexico children, youth and families department.

AS. DESIGNATED AGENCY means the agency that has the primary responsibility of partnering with the client and family for implementation of the comprehensive service plan.

~~[AI-]~~ AT. DIRECT

PHYSICAL SUPERVISION means, with reference to criminal records clearances, either continuous visual observation or live video observation of a non-cleared agency staff member by a cleared agency staff member or by the client's legal guardian, while the non-cleared staff is in immediate presence of the client.

~~[AU]~~ AU. DIRECT SERVICE STAFF means supervisors, physicians, nurses, therapists, client care workers, coordinators or other agency personnel who work in immediate direct unsupervised contact with children.

~~[AV]~~ AV. DIRECT UNSUPERVISED CONTACT means physical proximity to clients, such that physical contact or abuse could occur, without being observed or noticed by another staff member who has been cleared by the department.

~~[AW]~~ AW. DIRECTED ACTION means a formal action(s) specified by the LCA that the agency is required to undertake ~~and/or~~ or complete in order to correct a deficiency(ies) within a specified time frame.

~~[AX]~~ AX. DISCHARGE CRITERIA means specific clinically-based indicator(s) used to measure the client's degree of readiness for release from a given level of care stated in terms of achievement of treatment goals ~~and/or~~ or reduction of symptoms; discharge criteria may also include indicators that a given level of care is inappropriate for a client due to such factors as dangerousness or non-responsiveness to treatment.

~~[AY]~~ AY. DISCHARGE PLAN means a written section of a treatment plan/service plan and treatment plan/service plan reviews containing the following elements: behavioral ~~and/or~~ and other clinical criteria that describe the conditions under which discharge will occur, identification of barriers to discharge; the level of care, specific services to be delivered, and the living situation into which discharge is projected to occur; the projected date of discharge, individuals responsible for implementing each action specified in the discharge plan, and, when indicated, revisions.

~~[AZ]~~ AZ. DISCIPLINE means non-abusive training that enables a client to develop self-control and orderly conduct in relationship to others.

~~[BA]~~ BA. DOCUMENTATION means the written or printed record of information supporting the facts related to the certified services being provided to clients found in client files, personnel files, and other pertinent printed sources.

~~[BB]~~ BB. EARLY AND PERIODIC, SCREENING, DIAGNOSIS

AND TREATMENT (EPSDT) means periodic, comprehensive services to persons under 21 years of age; these services are defined in the medicaid program policies.

~~[BC]~~ BC. EMERGENCY SAFETY INTERVENTION means personal restraint or seclusion.

~~[BD]~~ BD. EMERGENCY SANCTION means an immediate requirement that is imposed on a program by the LCA in response to a finding of health or safety deficiency(ies).

~~[BE]~~ BE. EMERGENCY SERVICE means an unanticipated admission to an acute medical or psychiatric facility or the provision of other medical services by paramedics or other emergency ~~and/or~~ or urgent care personnel.

~~[BF]~~ BF. EMERGENCY SUSPENSION means an immediate and temporary cancellation of a certification due to an existing health or safety deficiency(ies), pending an appeal hearing ~~and/or~~ and correction of health or safety deficiencies. During a period of emergency suspension, the medicaid provider agreement is not in effect.

~~[BG]~~ BG. EMPLOYMENT HISTORY means a verifiable written summary of employment including names, addresses and telephone numbers of employers, immediate supervisors as well as dates of and explanations for any period(s) of unemployment for a minimum of three years immediately prior to hire for employment by a certified program.

~~[BH]~~ BH. ENHANCED SERVICE means, in the medicaid managed care system, any and all services beyond the scope of the medicaid (fee-for-service) benefit package available to recipients in the medicaid managed care program.

~~[BI]~~ BI. EXCLUSIONARY CRITERIA means agency-written criteria that define the diagnoses, behaviors, or conditions that preclude admission to the certified program.

~~[BJ]~~ BJ. EXEMPLARY means a certified status conferred by the LCA on a program that has no history of temporary certification, sanctions or loss of certification in the previous two years and meets all of the certification requirements with minor or no deficiencies.

~~[BK]~~ BK. EXPLANATION HOLD means a type of sanction under which an agency is prohibited from obtaining certification for additional services until the LCA determines that identified deficiencies are corrected and lifts the sanction.

~~[BL]~~ BL. EXPLOITATION means the act or process of using a client or client's property for another person's profit, advantage or benefit.

~~[BM]~~ BM. FACILITY

means the physical plant and building(s) licensed by the LCA in which residential or day treatment mental health services are provided.

~~[BN]~~ BN. FUNCTIONAL LEVEL means a determination of the client and as applicable, his family's, functional skills in multiple domains.

~~[BO]~~ BO. GENERAL PROVISIONS means the series of certification requirements found in Sections 9 through 25 of these certification requirements.

~~[BP]~~ BP. GOVERNING BODY means the organizational entity of an agency that has the ultimate responsibility for all planning, direction, control, and management of the activities and functions of a program certified pursuant to these certification requirements.

~~[BQ]~~ BQ. GROUP HOME SERVICES (GHS) means mental and behavioral health services offered in a supervised, licensed facility that provides structured therapeutic group living for children/adolescents with moderate behavioral, psychological, neurobiological, or emotional problems, when clinical history and opinion establish that the needs of the client cannot be met in a less restrictive environment.

~~[BR]~~ BR. HEALTH ~~AND/OR~~ OR SAFETY DEFICIENCY means a deficiency that poses an immediate threat to the welfare of clients up to and including loss of life; physical harm; physical, sexual, psychological abuse ~~and/or~~ or exploitation.

~~[BS]~~ BS. HUMAN SERVICES DEGREE means an approved bachelors or masters degree from an accredited school in one of the following degrees: counseling and therapy, rehabilitation, psychology, criminal justice, social work/social services, or human development. If workforce issues are identified in a region of the state, the some other defined degrees may be considered as human services degrees. However, any experience required in the service definition must be met. In order for an agency to utilize staff with these degrees, they must submit a written waiver request to LCA with documentation supporting the workforce issues. Those alternative degrees may include nursing, sociology, public health, education, occupational therapy, speech and hearing sciences, speech-language pathology, communication sciences and disorders, gerontology, or social sciences.

~~[BT]~~ BT. INACTIVE STATUS means a type of certification granted to a program that is not currently serving clients.

~~[BU]~~ BU. INCIDENT REPORT means the document(s) describing a serious incident or alleged serious inci-

dent.

~~[B-]~~ BV. INFORMAL RESOLUTION CONFERENCE means an informal meeting and problem-solving process between the department and an agency to resolve any filed or potential appeal arising from the imposition or potential imposition of a sanction(s).

~~[B-]~~ BW. INFORMED CONSENT means a document that reflects that a client and the legal guardian(s) are advised of the benefits, risks, and alternatives of a given medication ~~and/or~~ or treatment and agree to the use of the medication ~~and/or~~ or treatment. Clients age 14 and above may consent to the use of a medication ~~and/or~~ or treatment without the approval of their legal guardian(s).

~~[B-]~~ BX. INITIAL CERTIFICATION means a type of certification granted to a program that has met the minimum requirements to implement a program to provide services pursuant to these requirements.

~~[B-]~~ BY. INVESTIGATION means a formal process of inquiry used by the LCA to: determine the validity of complaints or allegations made against certified agencies; ~~and/or~~ or to determine whether trends in incidents reported to the LCA that affect the health and safety of clients are the result of negligent practices, insufficient supervision of personnel or clients, or any other factor that requires correction; ~~and/or~~ or to determine whether or not an agency has made corrective responses to resolve matters of threat to client health and safety substantiated by the LCA.

~~[B-]~~ BZ. J C A H O means the joint commission on accreditation of healthcare organizations.

~~[B-]~~ CA. LICENSE means the written authorization issued by the LCA pursuant to 7.20.12 NMAC granting right to operate the designated facility for a specified period of time; or, in context, any necessary authorization by the appropriate credentialing authority to undertake the professional activity in question.

~~[B-]~~ CB. LICENSED INDEPENDENT PRACTITIONER means New Mexico-licensed clinical staff who are authorized to practice at the independent level.

~~[B-]~~ CC. LICENSED INDEPENDENT MEDICAL PRACTITIONER means a New Mexico licensed medical doctor (MD), doctor of osteopathy (DO), certified nurse practitioner (CNP), clinical nurse specialist (LCNS), or physician assistant (PA).

~~[B-]~~ CD. LICENSING AND CERTIFICATION AUTHORITY (LCA) means the licensing and certification unit of the children's behavioral health and community services bureau of the prevention and intervention division of the depart-

ment.

~~[B-]~~ CE. MAINTENANCE OR REDUCTION IN PROGRAM CAPACITY means a sanction that directs the agency to maintain or reduce the capacity of the program to a designated census until the LCA determines that deficiencies resulting in the sanction have been corrected.

~~[B-]~~ CF. MECHANICAL RESTRAINT means use of a mechanical device(s) to physically restrict a client's freedom of movement, performance of physical activity, or normal access to his or her body, and is distinct from personal restraint as defined below.

~~[B-]~~ CG. MEDICAID means Title XIX of the Social Security Act; the joint federal-state program that pays for medical care for low-income persons.

~~[B-]~~ CH. MONITORING means the ongoing review of a program's progress in correcting deficiencies. During a period of certification, monitoring is done at the discretion of the LCA. Monitoring may be implemented by means of a monitoring plan, and may require that specified documentation be submitted to the LCA by the agency or may include the use of on-site surveys by the LCA to ascertain compliance in specified areas.

~~[B-]~~ CI. MONITORING PLAN means a written set of guidelines and instructions specified by the LCA for a program to follow for the purpose of correcting deficiencies.

~~[B-]~~ CJ. MORAL TURPITUDE means conduct contrary to justice, honesty, modesty or good morals, as further specified in 8.8.3 NMAC.

~~[B-]~~ CK. MULTISYSTEMIC THERAPY (MST) is an intensive family and community-based treatment program that addresses the known determinants of serious antisocial behavior in adolescents and their families. MST treats the factors in the youth's environment that are contributing to his or her behavior problems. Such factors might pertain to individual characteristics of the youth (poor problem solving skills), family relations (inept discipline), peer relations (association with deviant peers) and school performance. Treatment goals for therapeutic change are developed on an individualized basis in collaboration with the family.

~~[B-]~~ CL. NEGLECT by individuals or an agency means:

(1) failure to provide any treatment, service, care, medication or item that is reasonably necessary to maintain the health or safety of a client; or

(2) failure to take any reasonable precaution that is necessary to prevent damage to the health or safety of a client; or

(3) failure to carry out a duty to supervise properly or control the provision

of any treatment, care, good service or medication reasonably necessary to maintain the health or safety of a client; or

(4) failure to take any reasonable precaution that would prevent the physical abuse, sexual abuse, or sexual exploitation of a client, as defined in the Children's Code at 1978 NMSA 32A-4-2, or the lack of which causes the client to become an abused child or neglected child as defined in the Children's Code at NMSA 1978 32A-4-2.

~~[C-]~~ CM. NON-ACCREDITED RTC means a program that provides residential treatment services pursuant to these requirements that is not accredited by JCAHO.

~~[C-]~~ CN. NON-RENEWAL means a sanction whereby certification is cancelled on or about the date of expiration.

~~[C-]~~ CO. NON-RESIDENTIAL SERVICES means a program that provides certified services other than twenty-four-hour continuous care within the confines of a facility or treatment foster home.

~~[C-]~~ CP. NOTICE OF CONTEMPLATED ACTION means a letter issued by the LCA identifying grounds for sanction of a program.

~~[C-]~~ CQ. NOTICE OF EMERGENCY SANCTION means a letter issued by the LCA when an emergency sanction is imposed.

~~[C-]~~ CR. NOTICE OF FINAL ACTION means a letter issued by the LCA stating that the sanctions proposed in a previous notice of contemplated action are in effect. This letter is issued upon the conclusion of any appeal/informal resolution proceeding or the expiration of the appeal period to the notice of contemplated action.

~~[C-]~~ CS. PARTIAL COMPLIANCE means a determination by the LCA that a program is found to have moderate and few deficiencies, none of which immediately compromises the health or safety of the clients.

~~[C-]~~ CT. PARTIALLY SUBSTANTIATED COMPLAINT means a complaint that the LCA has determined is factually accurate in part, but not factually accurate in its entirety.

~~[C-]~~ CU. PERMANENCY PLAN means the long-term plan for the child/adolescent developed by the protective services division of the department with one of the following outcomes: reunification, permanent guardianship, adoption, permanent placement with a fit and willing relative, or planned permanent living arrangements.

~~[C-]~~ CV. PERSONAL RESTRAINT means the application of physical force without the use of any



device, for the purposes of restraining the free movement of a client's body. The term personal restraint is distinct from therapeutic hold and mechanical restraint as defined herein and does not include briefly holding a client, without undue force, in order to calm or comfort him or her, or holding a client's hand to safely escort a client from one area to another.

~~[CK.]~~ **CW.** PHYSICAL ESCORT means the temporary touching or holding of the hand, wrist, arm, shoulder ~~[and/or]~~ or back for the purposes of inducing a client who is exhibiting unsafe or potentially unsafe behavior to walk to a safe location.

~~[CL.]~~ **CX.** PHYSICAL HARM means physical injury that requires treatment beyond basic first aid; or that results in loss of functional use of a bodily member or organ or of a major life activity for a prolonged period of time; or results in loss of consciousness for any amount of time.

~~[CM.]~~ **CY.** PHYSICIAN means an individual who has received a degree of doctor of medicine or doctor of osteopathic medicine and is licensed to practice medicine in the state of New Mexico.

~~[CN.]~~ **CZ.** POLICY means a statement of principle that guides and determines present and future decisions and actions.

~~[CO.]~~ **DA.** PREMISES means all parts of buildings, grounds, vehicles and equipment of a facility.

~~[CP.]~~ **DB.** PRE-SERVICE TRAINING means training that is provided to a newly hired employee prior to the employee's provision of direct services.

~~[CQ.]~~ **DC.** PROCEDURE means the action(s) that will be taken to implement a policy; ~~[and/or]~~ and the written description of such action(s) that serves as instruction to agency staff.

~~[CR.]~~ **DD.** PROGRAM means an agency, or subdivision of an agency, operated with the intent to provide certified services.

~~[CS.]~~ **DE.** PROVIDER means an agency or its personnel who have a medicaid provider number and deliver direct services to clients.

~~[CT.]~~ **DF.** PSYCHIATRIST means a physician who specializes in the treatment of psychiatric disorders, has completed an accredited psychiatric residency program, and holds a current license to practice medicine in the state of New Mexico.

~~[CU.]~~ **DG.** PSYCHOLOGICAL HARM means harm that causes symptoms of mental or emotional trauma, or that causes distress of sufficient magnitude to cause behavioral change, or physical

symptoms that may require psychological or psychiatric evaluation or treatment.

~~[CV.]~~ **DH.** PSYCHOLOGIST means a doctoral level psychologist who specializes in assessing and treating psychological disorders and holds a current license to practice in the state of New Mexico.

~~[CW.]~~ **DI.** PUNISHMENT means a penalty imposed on a child/adolescent by one in authority for wrongdoing.

**DJ.** RECOVERY means the process, outlook, vision and guiding principle that stresses that hope and restoration of a meaningful life are possible, despite serious mental illness. Instead of focusing primarily on symptom relief, as the medical model dictates, recovery casts a much wider spotlight on restoration of self-esteem and identity and on attaining meaningful roles in society (adapted from *Mental Health: A Report to the Surgeon General, Chapter 2, 1999*).

**DK.** RECOVERY/RESILIENCY MANAGEMENT PLAN means the foundational component for building the comprehensive service plan. The recovery/resiliency management plan component focuses on strengths and preferences based on identified competencies, the process of autonomy (independence), and developing a system of natural supports (satisfying and supportive social relationships). The recovery/resiliency management plan component shall include:

(1) the client and family's personal choice of service options and priorities in service delivery with a client centered focus;

(2) client driven interventions including attainable objective to address the client's defined needs;

(3) a clear identification of the environment in which the client lives including: family, school peers, community and home, and how each will play a part in the comprehensive service plan; and

(4) a clear approach to the development of resiliency based on life skills identified by the client and service team.

~~[CX.]~~ **DL.** REFERENCE CHECK means a documented contact with previous employers, supervisors, co-workers, ~~[and/or]~~ or other sources, initiated by the agency to evaluate a prospective employee prior to hire by establishing the accuracy of his/her employment history and to obtain other information relevant to potential hire.

**DM.** REHABILITATION means a process that enhances the efficacy of clients with functional limitations due to behavioral health disorders to obtain information, develop skills and access resources

needed to make decisions and implement strategies to be successful and satisfied in the living, working, learning, and social environments of their choice. Rehabilitation services are driven by the client's desire for recovery and resiliency based outcomes and are individualized, collaborative and person directed.

~~[CY.]~~ **DN.** RESIDENTIAL FACILITY means a facility licensed by the LCA, in which 24-hour continuous therapeutic care is provided to a group of children/adolescents in accordance with these certification requirements.

~~[CZ.]~~ **DO.** RESIDENTIAL TREATMENT SERVICES means a program that provides 24-hour therapeutic care to children/adolescents with severe behavioral, psychological, neurobiological, or emotional problems, who are in need of psychosocial rehabilitation in a residential facility.

~~[DA.]~~ **DP.** RESTRAINT/SECLUSION CLINICIAN means a New Mexico licensed medical doctor (MD), doctor of osteopathy (DO), certified nurse practitioner (CNP), clinical nurse specialist (LCNS), physician assistant (PA) or doctoral level psychologist (Psy.D., Ph.D., or Ed.D.), who is trained in the use of emergency safety interventions.

~~[DB.]~~ **DQ.** REVOCATION means a type of sanction making a certification null and void through its cancellation.

~~[DC.]~~ **DR.** SANCTION means a measure imposed by the LCA on a certified program, pursuant to these certification requirements, in response to findings(s) of a deficiency(ies), with the intent of obtaining increased compliance with these certification requirements.

~~[DD.]~~ **DS.** SECLUSION means a behavior management technique that involves locked isolation. Seclusion is distinct from therapeutic time-out.

~~[DE.]~~ **DT.** SERIOUS INCIDENT means an incident involving the death of a client, suicide attempt by a client; psychological or physical harm to a client; serious homicidal threat to or by a client; physical or sexual abuse/perpetration to, or by, a client or a staff member; the use, possession, or distribution of illegal substances by clients or staff; neglect or exploitation of a client by staff; AMA or emergency discharge; arrest or detention of a client; natural disasters, ~~[and/or]~~ or contagious disease outbreaks; or agency knowledge that a staff member has been charged with, or convicted of, a felony or of a misdemeanor involving moral turpitude, including but not limited to convictions referenced in 8.8.3 NMAC.

~~[DF.]~~ **DU.** SEXUAL ABUSE means any intentional and uninvited

ed contact, demand or enticement of a sexual nature, including contact with another person's clothed or unclothed genital area, anus, buttocks, or breast(s) if the recipient is female; or, intentional causing of another person to touch any of these areas on one's own or a third party's body; or, consensual contact with any of these areas if the initiator is in a position of significant influence over the recipient by reason of differences in age, physical size, development, intellectual sophistication, sexual sophistication, or position of authority; or, a verbal request, offer, or demand such as would initiate such contact when the initiator of the verbal behavior is in a position of significant influence as described above. Physical contact, as described above, includes contact between clothed or unclothed body parts of individuals, or may be between clothed or unclothed body parts of one person and an object.

~~[DG.]~~ DV. S T A F F means a person who has contact with children in a certified program and includes the owner, operator or director of a program, volunteers, full-time, part-time, contract employees, and treatment foster parents.

~~[DH.]~~ DW. S T A Y means the department is temporarily refraining from taking an action on a sanction, revocation, or suspension of certification.

~~[DI.]~~ DX. S U B S T A N T I A L C O M P L I A N C E means a determination by the LCA that a program is found to be without deficiencies, or with minor and few deficiencies, none of which compromise the health and safety of clients.

~~[DJ.]~~ DY. S U B S T A N T I A T E D C O M P L A I N T means a complaint or allegation that the LCA has determined is factual.

~~[DK.]~~ DZ. S U P E R V I S I O N means one of the following, as indicated by context: the monitoring of clients' whereabouts and activities by the program staff in order to ensure their health, safety, and welfare; or the clinical ~~[and/or]~~ or managerial oversight of staff.

~~[DL.]~~ EA. S U R V E Y means examination, ~~[and/or]~~ or other review, of a program's premises, records ~~[and/or]~~ or other documents; ~~[and/or]~~ or interview of client(s) ~~[and/or]~~ or staff, at the discretion of the LCA, pursuant to these certification requirements.

~~[DM.]~~ EB. S U S P E N S I O N means a type of sanction whereby certification is temporarily revoked, during which time the medicaid provider agreement is not in effect.

~~[DN.]~~ EC. T H E R A P E U T I C H O L D means the brief physical holding of a client, without undue force, used as part of a behavioral plan by an individual trained and certified by a state recognized body in the use of therapeutic holds and per-

sonal restraints, in a manner consistent with written agency policy, for the purpose of providing emotional comfort ~~[and/or]~~ or calming to the client, or physical safety to the client, other clients, staff member(s) or others. Therapeutic hold is distinct from personal restraint and mechanical restraint as defined above.

~~[DO.]~~ ED. T H E R A P E U T I C L E A V E means a period of time during which a treatment foster care services client is temporarily placed in a different treatment foster home. This affords the primary treatment foster parents a period of authorized leave.

~~[DP.]~~ EE. T H E R A P E U T I C T I M E - O U T means a technique involving individual isolation used as part of a written behavioral plan to prevent or decrease the potential for unsafe behavior and to give the client the opportunity to regain control.

~~[DQ.]~~ EF. T H E R A P I S T means a person who has a license from an appropriate licensing authority to provide direct clinical care services such as individual, family, or group therapy.

~~[DR.]~~ EG. T R E A T - M E N T F O S T E R C A R E S E R V I C E S ( T F C ) L E V E L I means a program that provides therapeutic services to children or adolescents who are psychologically or emotionally disturbed, ~~[and/or]~~ or behaviorally disordered, in a foster family setting, pursuant to these certification requirements.

~~[DS.]~~ EH. T R E A T - M E N T F O S T E R C A R E S E R V I C E S L E V E L I I means a program that provides therapeutic services to children or adolescents who are psychologically or emotionally disturbed, ~~[and/or]~~ or behaviorally disordered, in a foster family setting, pursuant to these certification requirements. It is distinct from treatment foster care services level I in that it is provided to children and adolescents who have successfully completed treatment foster care services level I as determined by the treatment team, and are in the process of returning to biological family and community, or who meet other established criteria.

~~[DT.]~~ EI. T R E A T - M E N T F O S T E R H O M E means a licensed residence overseen by a certified program and licensed child placement agency in which treatment foster care services are being provided to agency clients by licensed treatment foster parents.

~~[DU.]~~ EJ. T R E A T - M E N T P L A N means a written document formulated on an ongoing basis by a treatment team that guides and records for each client: individualized therapeutic goals and objectives; individualized therapeutic services provided; individualized discharge plans and aftercare plans.

~~[DV.]~~ EK. T R E A T -

M E N T P L A N N I N G means an ongoing process, based on assessment and regular reassessment of a client's needs, of documenting those needs, the interventions intended to address those needs, and the client's behavioral responses to interventions. Treatment planning includes initial treatment plans, comprehensive treatment plans, treatment plan reviews and discharge plans.

~~[DW.]~~ EL. T R E A T - M E N T T E A M means the group of individuals that assesses, plans, coordinates, implements, evaluates, reviews, and adjusts all aspects of a client's care over the course of treatment in a certified program. The treatment team includes the client, and as applicable, the client's family ~~[and/or]~~ or legal guardian(s), therapist, direct service staff, treatment coordinators, treatment foster parents, the department's social worker or juvenile probation/parole officer, case manager, a representative from an educational agency, ~~[and/or]~~ or other significant individuals in the client's life.

~~[DX.]~~ EM. U N S U B - S T A N T I A T E D C O M P L A I N T means a complaint or allegation that could not be verified by the LCA based on its investigation.

~~[DY.]~~ EN. V A R I A N C E means a deviation from a portion(s) of these certification requirements approved in writing at the sole discretion of the LCA. It is based upon stipulated conditions to be met by the agency, for an unlimited time period, provided that the health, safety, and welfare of the clients and staff are not in danger.

~~[DZ.]~~ EO. V O L U N - T E E R means an individual who works without compensation at an agency in the physical presence or proximity of clients.

EP. W R A P A R O U N D means a team-based activity that helps groups of people involved in a family's life work together toward a common goal.

~~[EA.]~~ EQ. W A I V E / W A I V E R means a deviation(s) from any part of these certification requirements approved in writing by the LCA, at the sole discretion of the LCA. It is based on stipulated conditions to be met by the agency, for a limited period of time, provided the health, safety, and welfare of clients and staff is not in danger.

[7.20.11.7 NMAC - Rp 7 NMAC 20.11.7, 03/29/02; A, 04/14/05; A, 01/01/08; A, 12/31/08]

#### 7.20.11.26 ~~[CASE—MANAGEMENT SERVICES:]~~

A. Case management services: facilitate a client's access to necessary care and the quality of such care; use a medical and psycho-social service model that advocates for, and builds upon, a client's and family's strengths and needs; facilitate

the use of a client's natural helping resources in the community; ensure continuity of care; promote coordination of physical, behavioral health and social services; and problem solve with clients, family care givers, legal guardians and other significant parties to assist them, if possible, in setting goals for themselves. The case management services agency provides case consultation to its direct service providers through the availability of a supervisor or case manager during all of the hours in which the service is provided.

**B.** Case management services agencies demonstrate direct experience in serving children/adolescents in the target population. The eligible target population is children/adolescents with, or at high risk for, multiple and complex special physical, cognitive and/or behavioral health care needs.

**C.** Personnel: All case management services are provided by, and under the supervision of, personnel who are qualified by the professional training listed below to coordinate the provision of services needed by the service population.

(1) The supervisor provides documented supervision, support and consultation to the case managers, as appropriate to training and performance of responsibilities, and commensurate with clinical difficulty of a caseload.

(2) Supervisors possess one of the following:

(a) a master's or doctoral degree in social work, psychology, nursing, sociology, education, counseling, special education, cultural anthropology or another related health, social or human service field from an accredited college or university, and a minimum of one year experience with the target population; or

(b) a bachelor's degree from an accredited college or university in the above stated fields and two years experience with the target population; or

(c) current New Mexico licensure as a registered nurse (RN) and two years experience with the target population.

(3) The case manager provides services at all times in accordance with client and family needs. The case manager to client ratio is no more than one to twenty.

(4) Case managers provide the following:

(a) case management assessment;

(b) service planning;

(c) assessing, coordinating, linking, monitoring, and advocacy of services; and

(d) measuring and evaluating outcomes.

(5) The case manager holds one of the following minimum qualifications:

(a) a bachelor's or higher degree

in social work, counseling, psychology, sociology, education, special education, cultural anthropology, or a related health, social or human service field from an accredited college or university;

(b) a bachelor's or higher degree in another field and two years of direct social service, human service, or health experience serving the target population;

(c) current New Mexico licensure as a registered nurse (RN), or licensed as a practical nurse (LPN) as defined by the NM board of nursing, with a minimum of one year direct social service, human service, or health experience serving the target population;

(d) an associate degree and a minimum of three years experience in community health, social service or human service including one year experience serving the target population; or

(e) a high school diploma (or GED) and a minimum of four years experience in community health, social services or human services including one year of that experience serving the target population; an individual with this qualification level must work under the direct supervision of an experienced case manager within the agency.

(6) A family assistant paraprofessional may be an employed member of a case management team under the direct supervision of a case manager. The family assistant paraprofessional may assist the case manager in coordinating or directly providing basic human services for the clients and their families. Direct services include such tasks as driving families to appointments, ordering durable medical equipment or supplies for clients, etc.

**D.** Training: Case managers and supervisors receive 24 hours of training within the first 60 days of employment related to their functions and responsibilities. Those employees who, prior to beginning employment, can provide documentation of training in one or more of these specified areas within the past year are not required to repeat that training; their training requirements may be adjusted as justified and documented by the clinical director or designee. All training provided is documented and includes:

(1) establishing a client/case manager relationship;

(2) confidentiality and abiding by organizational and professional ethics;

(3) eligibility standards and an understanding of service programs, purposes, and elements;

(4) knowledge of entitlement programs, eligibility requirements and benefits;

(5) organization structure, service mandates, policies, and limitations;

(6) case advocacy skills;

(7) availability of community

resources; and

(8) inventory assessment, service planning, tracking, and in the case of supervisors, supervisory tools.

**E.** Documentation of case management services functions and contacts with client/family/legal guardian indicate:

(1) type and place of contact (face to face, in home, school or office, telephone, etc.);

(2) service furnished;

(3) date and length of contact/service;

(4) purpose, content and result of contact/service;

(5) relationship of the service furnished to the goals identified in the plan of care/service plan.

**F.** Case management assessment:

(1) The organization conducts a case management assessment of each client as the basis for service planning and service delivery.

(a) Case management services programs are not responsible for performing the comprehensive assessment as described in the general provisions section of these requirements, but are responsible for the acquisition of information for the case management assessment and the case management service plan.

(b) Case management assessment includes the collection of information from the client and/or family/legal guardian served through face to face interview(s) in the client's usual living environment. The case management assessment identifies the client's range of problems and functional needs and what is or is not being done to resolve problems and needs. The information is documented in the client's record.

(2) The initial case management assessment is completed within 10 days admission to case management services and involves input from the client, parent/legal guardian, treatment guardian (if applicable) and significant others currently involved in the client's life. An assessment includes documented consideration of the client's needs in the following domains:

(a) fundamental activities of daily living (eating, bathing, mobility, continence, etc.);

(b) instrumental daily living activities (shopping, cooking, cleaning, money management, use of medication, etc.);

(c) psycho social functioning and emotional well being, which includes, when necessary, a cognitive screen;

(d) physical health status (medical and dental problems, current medications, physical disabilities, provision of care, and use of care);

(e) the potential for exploitation;

neglect, or injury of clients who are partially or totally unable to protect their own interests;

(f) financial status and eligibility for entitlements and other services or resources;

(g) social and physical environment;

(h) availability and use of formal and informal support systems.

#### G. Service planning:

(1) An individualized, goal-directed service plan is developed and written within 30 days of admission to case management services and is based on the needs identified in the case management assessment; it specifies the case management services functions necessary to address the identified needs. A case management services program is not required to develop and review a treatment plan as specified in the general provisions of these certification regulations. A program providing both case management and other certified services must develop a treatment plan for the other certified services being provided.

(2) The client, family, legal guardian, informal care givers, and significant others are included in the development of the service plan. This involvement is documented by participants' signatures on the service plan.

(3) The service plan specifies:

(a) strengths and needs;

(b) goals and measurable objectives for each need; interventions/services necessary to meet the goals and measurable objectives;

(c) identification of persons responsible for implementing each intervention/service;

(d) scheduled delivery of service;

(e) goal, amount, scope and expected duration of each service element and anticipated outcomes.

(4) A copy of the service plan is provided to the client and/or his or her parent/legal guardian and to any or all of those who sign(s) the service plan.

(a) Any person(s) involved in the service planning may request a review of the service plan.

(b) The service plan is reviewed and/or revised at a minimum of every six months, or more often as indicated by events and/or circumstances.

#### H. Community access, advocacy, coordinating, linking, and monitoring of services:

(1) The case manager documents the individual's and family's participation in accessing, coordinating and linking of appropriate, necessary resources and services to the maximum extent possible.

(2) The case manager assists, educates and advocates for the individual and

family in identifying appropriate, necessary providers from both community resources/services and natural helping resources, such as family members, friends, church members, and support groups.

(3) The case manager assists in coordinating services and resources as well as linking the individual to those services and resources that meet his or her needs in the least restrictive setting/conditions possible in the most cost effective manner.

(4) All efforts including advocacy, accessing, coordinating, linking and monitoring of necessary services/resources is documented.

(5) The individual's progress toward the service goals and objectives is documented.

#### I. Termination of service:

(1) Termination of services is conducted in an orderly and timely manner. Necessary aftercare plans are developed and referrals and transitions to other appropriate entities are completed.

(2) Service is terminated when:

(a) Those receiving services no longer need or want the service; or

(b) Clients receiving services are unavailable for a time period specified in the case management services agency's procedures, due to hospitalization and/or other reasons; or

(c) The client no longer meets the eligibility criteria.

(3) The client receiving services and his or her parent(s)/legal guardian are provided with a written statement identifying the reason for any involuntary discharge, generally within five business days of the date service was terminated.

(4) The case manager prepares a narrative discharge summary that is documented in the client's case record within 15 days of case closure, unless an earlier discharge summary is indicated in order to meet the needs identified during discharge planning.

(5) The case manager and, when available, the client, parent, legal guardian or treatment guardian and other relevant persons participate in the termination of services process. When the client and/or legal guardian(s) are not available for the termination process, the agency notifies them in writing that the services are being terminated.]

### **COMPREHENSIVE COMMUNITY SUPPORT SERVICES:**

A. Comprehensive community support services (CCSS) shall coordinate and provide necessary services and resources to eligible clients and families to promote recovery, rehabilitation and resiliency.

B. These culturally sensitive services shall identify and address the barriers that impede the development of

skills necessary for independent functioning in the community as well as strengths, goals and measurable objectives, which may aid the client or family in the recovery or resiliency process.

C. CCSS shall address goals as identified by the client or family specifically to meet recovery and resilience based outcomes in the areas of independent living, learning, working, socializing and recreation.

D. CCSS shall be provided to children, youth and adults with significant behavioral health disorders and who meet other criteria as identified by the collaborative.

E. CCSS shall be provided in compliance with the medical assistance division (MAD) definition of medical necessity and shall be furnished within the MAD benefits.

F. CCSS shall be furnished within the scope and practice of the provider's respective profession as defined by state law, and in accordance with applicable federal, state and local laws and regulations.

G. An assessment of baseline functioning shall be performed within 10 working days of the client's admission into CCSS services. The assessment shall evaluate and document the client's specific functional effectiveness in multiple skill domains based on the desired outcomes of the client or family.

(1) Functional level determination shall identify domains in which functional limitations precipitated by the behavioral health disorder are present. The diagnoses and assessments shall be the basis for the comprehensive client or family driven goal directed, measurable service plan.

(2) CCSS eligible clients shall have one designated agency that will have the primary responsibility of partnering with the client and family for the purpose of implementing the comprehensive service plan.

H. Within the CCSS agency, a primary community support worker (CSW), under the documented supervision of the CCSS supervisor, shall be identified on the comprehensive service plan and shall partner with the client and family for the purpose of coordinating and facilitating recovery and resiliency directed team meetings. The CCSS supervisor shall sign, with name, credentials, and date, the initial service plan indicating that he has reviewed and approved the comprehensive service plan and each revision as it occurs.

I. Community support activities and relevant providers shall be clearly identified in the comprehensive service plan. The primary CSW shall coordinate the service plan without duplication by the other service providers. The CCSS

comprehensive service plan shall be completed no later than 30 calendar days of the client's admission into CCSS services and specify recovery and resiliency strategies to include:

(1) the community support(s) and any other rehabilitative and treatment interventions needed for the client to achieve his specified service goals and to meet recovery and resiliency outcomes;

(2) the CCSS staff responsible for each recovery and resiliency intervention and the frequency of the planned interventions;

(3) the client's relevant diagnoses and other risk factors that place him at risk of further diagnoses;

(4) measurable goals and objectives identified by the client and family as their comprehensive service plan priorities to meet desired recovery and resiliency outcomes;

(5) a recovery/ resiliency management plan;

(6) a crisis management plan to address after-hours crisis situations including actions to be taken by client, family and natural supports;

(7) potential service plan barriers and applicable strategies; and

(8) if requested, advanced directives related to client's behavioral health-care.

J. CCSS shall include the development of crisis plan interventions, as defined in an individual crisis plan, as a component of overall CCSS comprehensive service plan. If the client has or requests an advance directive, the crisis plan may be incorporated into the advance directive. The individualized crisis plan shall support the client and family in the management of crisis situations outside of regular business hours to develop or enhance the client's ability to make informed and independent choices.

(1) the crisis plan shall include the following requirements, which shall be formulated on admission to CCSS by the CCSS team, client, family, legal guardian and other interested parties.

(a) Risk assessment: Specify a process to assess potential risk and specify an algorithm of community resources to address by risk level that ranges from immediate (i.e. 911 or first responders) to intermediate (e.g. call to crisis line) to moderate (call for a clinic appointment). Specify a process to identify benchmarks that indicate when a crisis is appropriate reconciled.

(b) Client/family education: Provide the client and family education on community resources to be accessed during crisis situations. Each family and client shall be provided basic verbal communication techniques to help de-escalate a poten-

tial crisis situation.

(c) Internal communication: Crisis events are discussed in the CCSS team meeting to ensure all risk factors are identified and known by all team members.

(d) Face-to-face assessment: CCSS team member shall make a face-to-face visit as soon as possible, but no more than 48 hours after notification of a crisis, and complete an updated assessment for presentation to the team.

(e) Research past crisis situations for antecedent, precipitant, and consequent behaviors and discuss with the client or family to identify strategies or objectives likely to prevent crises.

(f) Identify alternative interventions that may be initiated during crisis situations, including pre-crisis or crisis instructions identified by the client or family.

(g) Incorporate client and family outcomes as benchmarks or measures of when the crisis is over.

(h) Revise crisis plan over time based on newly identified triggers and what is known to be effective.

(i) Document behavioral benchmarks (e.g., number of runs, self-injury, assaults, etc., and what worked).

(2) The negotiated crisis plan shall triage for differing levels of intensity and severity of crisis events and may identify other types of interventions that may include:

(a) residential services for stabilization;

(b) crisis respite services;

(c) wrap around services;

(d) increased family and community support specialist capacity to manage crisis situations;

(e) activation of advance directive instruction; and

(f) utilization of emergency room (ER) and other emergency response supports.

K. Every 90 days after implementation of the comprehensive service plan, the CCSS team, in partnership with the client and family, shall track and provide detailed documentation demonstrating progress made over time relating to the CCSS service goals, objectives and client/family designated recovery or resiliency outcomes. These shall be documented in the service plan updates with modifications made based upon barriers identified or redefined goals and objectives and future needs.

L. The follow up assessment shall document the current status of the client and family designated measurable recovery or resiliency functional outcomes.

M. Individualized CCSS interventions shall address the following

objectives, as indicated in the assessment and comprehensive service plan:

(1) community services and resources available to support the client's achievement of his functional CCSS service goals and objectives;

(2) assistance in the development of interpersonal, community coping and functional skills (i.e., adaptation to home, school and work environments), utilizing evidence-based practices to support the skills development in the following domains:

(a) socialization skills;

(b) developmental issues as identified in the assessment;

(c) daily living skills;

(d) school and work readiness activities; and

(e) education and management of co-occurring illness;

(3) facilitating the development and eventual succession of natural supports in the workplace, housing/home, and social and school environments;

(4) provision of client and family education as appropriate regarding:

(a) self-management of symptom monitoring, illness management, and recovery and resiliency skills;

(b) relapse prevention skills;

(c) knowledge of medication and potential side effects;

(d) motivational and skill development in taking medication as prescribed;

(e) ability to identify and minimize the negative effects of symptoms which potentially interfere with the client's activities of daily living; and

(f) as indicated, supports to the client to maintain employment and school or community tenure;

(5) facilitating the client's abilities to obtain and maintain stable housing;

(6) any necessary follow-up by the CSW to determine if the services accessed have adequately met the client's needs.

N. Cultural competence shall be demonstrated by the CCSS provider through the agency's policies, procedures, training, outreach and advocacy efforts, and throughout the array of service delivery framework.

O. The CCSS provider shall demonstrate through a documented internal quality monitoring process that on average (60% or more) of CCSS services are delivered face-to-face and in vivo (where client is in the community).

P. The CSW shall provide routine follow-up to determine if the services accessed have adequately met the client's rehabilitative, recovery, resiliency, and treatment needs and document findings.

Q. CCSS shall be offered

at convenient times and locations to meet the needs of the client and family; the CCSS provider will actively work to eliminate language, financial, and other barriers to service.

**R.** For clients and their families: The CSW shall make every effort to engage and partner with the client and family in achieving rehabilitative, recovery, and resiliency goals. Barriers to engaging the client or achievement of the service goals will be identified and utilized to amend the service plan interventions.

**S.** When CCSS is provided by a certified peer or family specialist, CCSS functions shall be performed with a special emphasis on recovery and resiliency values and process, such as:

(1) empowering the client to have hope for, and participate in, his own recovery;

(2) assisting the client to identify strengths and needs related to attainment of independence in terms of skills, resources and supports, and to use available strengths, resources and supports to achieve independence;

(3) assisting the client to identify and achieve his personalized recovery and resiliency goals; and

(4) promoting the client's responsibility related to illness self-management.

**T.** CCSS shall be subject to the limitations and coverage restrictions as defined by 8.315.6 NMAC, Comprehensive Community Support Services.

**U.** Behavior management skills development service (BMS) interventions are distinct and different from CCSS and shall not be considered to be CCSS.

**V. Eligible providers:** CCSS shall be delivered by a certified mental health agency.

(1) The agency shall be a legally recognized entity in the United States, qualified to do business in New Mexico, and shall meet standards established by the state of New Mexico or its designee, and requirements of the funding source.

(2) CCSS shall be provided in the following type of entities:

(a) federally qualified health center (FQHC);

(b) Indian health service (IHS) hospital or clinic;

(c) tribal-638 hospital or clinic;

(d) community mental health center

(e) core service agency (CSA); or

(f) an agency otherwise certified as a CCSS agency by New Mexico children, youth and families department (CYFD) or New Mexico department of health (DOH)

(3) Eligible clients who are 18 through 20 years of age may be served by an agency certified for CCSS by CYFD or

DOH, as indicated.

**W. Staff qualifications:** Clinical services and supervision by licensed behavioral health practitioners shall be in accordance with their respective licensing board regulations.

(1) Minimum staff qualifications for the CSW:

(a) shall be a minimum of 18 years of age; and

(b) shall hold a bachelor's degree in a human service field from an accredited university and one (1) year relevant experience working with the target population; or

(c) shall hold an associate's degree in a human service field from an accredited college and have a minimum of two (2) years of experience working with the target population; or

(d) shall be a high school graduate or have a general education development (GED) and shall have a minimum of three years of experience working with the target population; or

(e) shall be certified as a certified peer specialist (CPS) or certified family specialist (CFS).

(2) Minimum staff qualifications for the CCSS program supervisor:

(a) shall hold a bachelor's degree in human services field from an accredited university;

(b) shall have a four (4) years relevant experience working with the target population; and

(c) shall have one year demonstrated supervisory experience.

(3) Minimum staff qualifications for the clinical supervisor (The clinical supervisor and the CCSS program supervisor may be the same individual):

(a) shall be a licensed independent practitioner (i.e., psychiatrist, psychologist, LISW LPCC, LMFT, psychiatrically certified CNS) practicing within the scope of their New Mexico licensure;

(b) shall have one year documented supervisory experience; and

(c) shall provide documented clinical supervision on a regular basis to the CSW, CPS and CFS.

(4) Minimum staff qualifications for CPS:

(a) shall be a minimum of 18 years of age;

(b) shall have a minimum of high school diploma or GED;

(c) shall be self-identified as a current or former consumer of mental health or substance abuse services and have at least one year of mental health or substance abuse recovery; and

(d) shall have received certification as CPS.

(5) Minimum staff qualifications for CFS:

(a) shall be a minimum of 18

years of age;

(b) shall have a minimum of high school diploma or GED;

(c) shall have personal experience navigating any of the child-family-serving systems or advocating for family members who are involved with the behavioral health systems; shall have an understanding of how these systems operate in New Mexico;

(d) if the individual is a current or former consumer, he shall be well-grounded in his symptom self-management; and

(e) shall have received certification as a CFS.

**X. Staff training requirements:**

(1) The minimum CCSS staff training completed for all CSWs shall be documented in the personnel record and include:

(a) an initial training comprised of 20 hours of documented training or education drawn from an array of the following areas, to be completed within the first 90 days of employment as a CSW:

(i) clinical and psychosocial needs of the target population, including cultural competency with regard to race, religion, national origin, sex, physical disability and other community-specific characteristics;

(ii) psychotropic medications and possible side effects;

(iii) drugs of abuse and related symptoms;

(iv) crisis management;

(v) principles of recovery, resiliency and empowerment;

(vi) ethical and cultural considerations;

(vii) community resources and services, including pertinent referral criteria;

(viii) client and family support networking;

(ix) mental health or developmental disabilities code;

(x) children's code;

(xi) client and family centered practice;

(xii) behavioral management;

(xiii) treatment and discharge planning with an emphasis on recovery and crisis planning.

(b) documentation of ongoing training is required and maintained in the personnel record and comprised of 20 hours per year, commencing after the first year of hire, with content of the education based upon agency assessment of staff's needs. Such assessment shall be monitored and documented through the agency's continuous quality improvement program and annual plan.

(2) Minimum staff training requirements for supervisors shall be docu-

mented in the personnel record and include:

(a) the same 20 hours of documented training or continued education as required for the CCSS CSW;

(b) a minimum of eight hours of training specific to supervisory activities; and

(c) documentation of ongoing training comprised of 20 hours is required of a CCSS supervisor every year, commencing after the first year of hire, with content of the education based upon agency assessment of staff's needs. Such assessment shall be monitored and documented through the agency's continuous quality improvement functions.

**Y. Case loads:**

(1) Caseloads, on average, shall not exceed a ratio of 1:20 (one CSW to 20 clients receiving CCSS).

(2) Clients participating in medication management as the primary focus of service are not subject to the client- staff ratio.

(3) CSW caseloads, of client to staff ratio of 1:20 on average, shall be monitored and documented through the agency's internal continuous quality improvement program through defined periodic review activities such as peer chart reviews to ensure the agency is in caseload compliance. The agency will implement timely corrective action when it is identified that staff ratio averages are not in compliance.

(4) Detailed case notes document all CCSS service intervention activities and locations of services provided for each service span delivered and include the CCSS worker's name, credential and date of the service delivery.

**Z. Documentation requirement:**

(1) The CCSS provider shall be responsible for consistent documentation of all service delivery. Each service delivery case note shall include but not be limited to:

(a) date of service;

(b) service location;

(c) duration of service span (e.g., 1:00-2:00pm);

(d) description of the service provided with reference to the comprehensive service plan and related service goal and objective; and

(e) the client's name, and signature and credential of the individual delivering the service.

(i) All CCSS file documentation shall be legible.

(ii) All CCSS service delivery shall be consistent with the service definition requirements.

(2) CCSS comprehensive service plan and service delivery documentation shall be internally monitored through the agency's continuous quality improvement

functions at least quarterly to ensure compliance with all of the certification requirements.

[7.20.11.26 NMAC - Rp 7 NMAC 20.11.25, 03/29/02; A, 12/31/08]

## NEW MEXICO EDUCATIONAL RETIREMENT BOARD

This is an amendment to 2.82.5 NMAC, Section 15, effective December 31, 2008.

### 2.82.5.15 RETURN TO WORK:

~~A. The twelve month consecutive break in service required under the return to work program of the act shall mean that no service shall be rendered to any administrative unit by the retired member for this period. Such service shall be defined as including all employment whether full time, part time including service allowed under Rule 82.2.11 B(1), substitute teaching, volunteering in a normally paid position, or services rendered as an independent contractor, an employee of an independent contractor or any other employment as described in 82.2.11.A through 82.2.11.D.~~

~~B. The consecutive twelve month break in service shall be calculated from the effective date of retirement until the first day of re-employment. To qualify for the return to work program, the break in service may have commenced at anytime, but must be at least 12 consecutive months directly preceding the retired member's return to work, as long as such re-employment commences on or after January 1, 2002.]~~

A. In order to qualify to return to employment (hereinafter "return to work") as provided for in Subsections A and E of Section 22-11-25.1, NMSA 1978, a retired member must have a period of at least twelve consecutive months in which they have not been employed as an employee or independent contractor by a local administrative unit (hereinafter, a "break in service").

(1) To satisfy the requirements of a "break in service," the retired member must not have rendered service of any nature whatsoever to a local administrative unit for the twelve consecutive month period. "Service" shall be defined to include, without limitation, all employment whether full time, part-time including service allowed under Paragraph (1) of Subsection B of 2.82.2.11 NMAC, substitute teaching, performing duties as a volunteer, which would otherwise be, or in the past have been, performed for the local administrative unit by a paid employee or independent

contractor, or services rendered as an independent contractor, an employee of an independent contractor, or any other employment as described in Subsections A through D of 2.82.2.11 NMAC. A "local administrative unit" shall include any entity controlled by or subject to the control of a local administrative unit, including without limitation, a corporation or other entity regardless of legal form and of whether such corporation or entity is created for profit or non-profit purposes.

(2) The break in service must have commenced after the effective date of retirement and been completed prior to the first day of re-employment, but need not have been the twelve consecutive months immediately prior to the first day of such re-employment (i.e. the break in service could have occurred at any time during the period after the effective date of retirement and before the first day of re-employment but must have been at least twelve consecutive months within that period). After completing a twelve consecutive month break in service, a retired member may work .25 FTE or less as provided by Paragraph (1) of Subsection B of 2.82.2.11 NMAC, without effecting that member's eligibility for the return to work program.

B. In addition to a break in service of at least twelve consecutive months, in order to satisfy the provisions of Section 22-11-25.1 (E), a member who retired on or before January 1, 2001, and who subsequently removed him or herself from retirement (also referred to as "suspending retirement") pursuant to Section 22-11-25, NMSA 1978, and thereafter re-retired, must complete an additional period of at least ninety days after the re-retirement, during which the retired member has not been employed as an employee or an independent contractor by a local administrative unit. During the ninety day period, the retired member must satisfy the same requirements regarding employment by a local administrative unit as must be satisfied for a twelve consecutive month break in service. The ninety day period shall not include any portion of the period used to satisfy the twelve consecutive month break in service. In addition, the ninety day period shall not include any scheduled breaks, vacations, paid administrative or sick leave, or holidays consisting of more than two business days.

C. Any and all time that a retired member has provided service to ~~an~~ a local administrative unit under the return to work program cannot be used in the calculation of retirement benefits and a retired member is not entitled to acquire service credit or to acquire or purchase service credit in the future for the period of the retired member's re-employment with a

local administrative unit under the return to work program.

D. No retired member is eligible for the return to work program ~~[of this act until they submit a]~~ until the member submits a completed, signed and notarized return to work form as supplied by ERB, (the "return to work application"), verifying their eligibility for the return to work program ~~[of the act].~~

E. The date of suspension of retirement for any retired member shall be the last day of the month in which the member suspended retirement.

~~[F. A retired member who was participating in the return to work program must wait a minimum of ninety (90) days from the date of suspension before he or she can purchase any withdrawn service.]~~

[G.] F. Any retired member who is participating in the return to work program who has violated the provisions of the program, failed to submit the required ~~[form as described in 82.5.15(D)]~~ return to work application, or is discovered to have been ineligible to participate in the program shall have their retirement immediately suspended and shall pay the educational retirement fund a sum equal to all retirement payments that they have received while ineligible under the provisions of the return to work program plus interest at a rate to be set by the board. Before his or her monthly retirement benefits can resume, the suspended retired member must certify to the ERB that they have terminated any and all employment that would disqualify them from retirement under the Educational Retirement Act. To ~~[requalify]~~ re-qualify for the return to work program, ~~[he or she]~~ the retired member must complete the minimum ~~[twelve month]~~ break in service as described in ~~[82.5.15]~~ Subsection A of 2 82.5.15 NMAC, calculated from the date of reinstatement of retirement.

~~[H.]~~ G. A retired member is qualified under Section 22-11-25.1(B) to return to full time employment ~~[and not be]~~ without being required to suspend retirement benefits if ~~[they]~~ the member:

(1) ~~[had]~~ retired on or before January 1, 2001; and

(2) did not work more than .25 FTE at any time after January 1, 2001 or provide any other service to ~~[an]~~ a local administrative unit after that date that would have required the member to suspend retirement benefits under the act; and

(3) did not suspend retirement after January 1, 2001; and

(4) ~~[has]~~ completed a return to work application with ERB.

~~[(S)]~~ H. Member's qualifying under Section 22-11-25.1(B) may begin full time employment ~~[under this section]~~ immediately after ERB approval without any additional waiting period.

~~[I. The ninety day waiting period as described in Section 22-11-25.1(E) shall be counted from the effective date of re-retirement and shall not include any scheduled breaks, vacations, paid administrative or sick leave, or holidays consisting of more than two business days.]~~  
[2.82.5.15 NMAC - N, 11-30-2001; A, 12-14-2001; A, 10-31-2002; A, 7-15-2003; A; 12-31-2008]

## NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.71 NMAC - Operating Permit Emissions Fees, Section 112, effective 01/09/09.

### 20.2.71.112 EMISSION FEE

A. The fee for each fee pollutant shall be ~~[\$12.00]~~ \$20.00 per ton on an annual basis, except as provided for in Subsection B of 20.2.70.112 NMAC. This fee shall increase ~~[to \$14.00 per ton]~~ by \$2.00 per ton on an annual basis ~~[for fees due June 1, 2006; to \$16.00 per ton on an annual basis for fees due June 1, 2007; and to \$18.00 per ton on an annual basis for fees due June 1, 2008 and thereafter]~~ beginning on January 1, 2010 through the fees due on June 1, 2012.

B. The fee for each hazardous air pollutant shall be \$165.00 per ton on an annual basis for any stationary source which is only major as defined in 20.2.70 NMAC for any hazardous air pollutant.

C. Fees for mercury emissions.

(1) For the calendar years 2010 through 2017, the fee for mercury emissions from stationary sources subject to 20.2.85 NMAC shall be \$8.88 per ounce annually.

(2) For the calendar years 2018 and thereafter, the fee for mercury emissions from stationary sources subject to 20.2.85 NMAC shall be \$22.51 per ounce annually.

D. The fee per ton of emissions above annual allowable emission limits shall be identical to the fee per ton of allowable emissions.

E. Beginning on January 1, 2009, the fees referenced in this section shall be changed annually by the percentage, if any, of any annual increase in the consumer price index in accordance with Section 502(b)(3)(B)(v) of the federal Clean Air Act.

[11/30/95; 20.2.71.112 NMAC - Rn, 20 NMAC 2.71.112 10/31/02; A, 12/15/04; A, 06/15/07; A, 01/09/09]

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.30.2 NMAC, Sections 7, 8, 9, 10, 11 and 13, effective 12-31-2008.

### 19.30.2.7 DEFINITIONS:

A. **Game animals:** This regulation shall apply to only those wildlife species defined as protected under 17-2-3, 17-5-2, 17-2-13, 17-2-14 NMSA 1978 and any other wildlife species managed or regulated by the New Mexico state game commission and New Mexico department of game and fish.

B. **"Depredation"** is hereby defined as private property damage, including growing crops or harvested and stored crops, caused by game animals on privately owned or leasehold ~~[interest land]~~ private land, such that the damage caused results in a measurable loss of value. This definition may apply to private property that occurs on other than private land, as reasonable and appropriate, as determined by the department.

C. **"Threat to human life"** shall mean that death or great bodily harm is likely to occur to a person due to the closeness, aggression or attack of a game animal or quadruped.

D. **"Immediate threat to human life"** shall mean that an attack is so imminent that nothing, short of destruction, can be done to avert the aggression.

E. **"Immediate threat of damage to property or crops"** shall mean that game animals exist in such numbers that there is no time for intervention by the department to avert substantial private property damage ~~[before the damage exceeds the value of the animal, as listed in 17-2-26, or when intervention has failed].~~

F. **"Crops"** shall mean any cultivated field or forage, whether sown or natural, which is used chiefly for livestock in that the landowner harvests the product to feed livestock or commercially sell it; or any other feed or commercially sold product that may be stored on properties for future shipping ~~[and/or]~~ or marketing or any other crop grown to provide human subsistence.

G. **"Attractive nuisance"** shall mean any crop or other material placed on a landowner's property to intentionally draw in protected wildlife.

H. **"Landowner"** is any person who personally owns private property legally recognized by the state of New Mexico.

I. **"Lessee"** is any person who leases private property from another in order to grow crops or produce livestock.



**J. "Employee"** is any person who is paid by a landowner or lessee for providing services to the landowner or lessee and that the service is related to the depredation.

**K. "Take"** shall mean to trap, ensnare, or intentionally prevent the natural movement of a game animal or quadruped.

**L. "Leasehold interest"** shall mean any person who leases or rents private agricultural property, whether or not that person is responsible for the crop or livestock.

**M. "Quadruped"** shall mean any furbearing animal, as defined in 17-5-2 NMSA 1978, for which the department has jurisdiction (muskrat, mink, nutria, otter, weasel, beaver, masked or black-footed ferret, ringtail cat, raccoon, pine marten, coatumundi, badger, bobcat, and all foxes).

**N. "Good cause"** [as described herein shall mean that the landowner can show that the method of intervention offered would cause damage to persons or property or that the intervention method will not work. The cause must be substantial, legally sufficient ground or reason that is not arbitrary] as used herein shall mean either or both of the following.

(1) The landowner can document that the intervention offered would cause physical damage to persons or property.

(2) The landowner can document that the intervention offered will not result in a substantial lessening of the depredation it is intended to affect.

(3) In either instance the claim of good cause by the landowner must be made in good faith and supported with facts sufficient reasonably to meet either or both of the above criteria and provided to the department in written form within ten (10) days following the proposed interventions being communicated to the landowner or lessee.

**O. "Negligence"** shall mean the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.

**[O:] P. "Big game depredation damage stamp"** shall mean a stamp, check off or other official mark purchased with each big game hunting license as required by 17-3-13.3 and 17-3-13.4 NMSA 1978.

[9-1-89, 9-15-97; 19.30.2.7 NMAC - Rn & A, 19 NMAC 30.2.7, 7-16-01; A, 12-28-01; A, 12-31-08]

### 19.30.2.8 TECHNIQUES/INTERVENTION:

**[A. Reporting:** A landowner, lessee, or employee, upon recognizing depredation, shall contact by

~~phone, in person, or in writing, the Department of Game and Fish. officer or office in the area where the damage is occurring. The officer shall record the complaint on a form approved by the State Game Commission within 3 days and forward a copy of the complaint to the landowner, lessee, or employee and the Department office in Santa Fe. Upon receipt of the complaint and no later than 3 days, the Department will issue the landowner, lessee, or employee a depredation complaint number. If any Game animal is taken pursuant to this regulation, the landowner, lessee or employee shall allow a Department of Game and Fish representative on the property for inspection and removal of the carcass. Upon such inspection, the Department representative will photograph the carcass, report the method of killing, photograph the damage to the property and write a report on the incident, including adjacent range conditions.~~

~~(1) Within three (3) days of reporting the depredation, the landowner, lessee, or employee must furnish the Department of Game and Fish with verifiable documentation of any income earned from the depredating species on that property. Such documentation may be hunting contracts, private land hunter lists, trespass fees etc.~~

~~(2) The tolling of time limits, as described in 17-2-7.2 NMSA 1978, will begin upon issuance of the depredation complaint number.~~

~~(3) A Department representative or employee will go to the private or leasehold interest property of the complainant within 24 hours of receipt of the complaint and will, with the landowner, lessee, or employee, determine the kind and number of animals involved and the extent of the damage. If the landowner, lessee, or employee is not available for inspection within 24 hours, the tolling of time will not begin until the inspection has occurred.~~

~~(4) Within 10 days of the receipt of the complaint, the Department will offer a minimum of three (3) methods of intervention that will resolve the depredation problem. However, at least one intervention method shall be a permanent solution. The intervention methods shall be in writing on a form approved by the State Game Commission.~~

~~(5) Upon written agreement as to the intervention, the Department will implement the intervention methods. Methods will begin within five (5) days of the signed agreement.]~~

**A. Reporting:** A landowner, lessee, or employee, upon recognizing depredation, shall contact the department of game and fish by toll-free phone number available twenty-four (24)

hours a day, seven (7) days a week.

~~(1) Upon being notified by a landowner, lessee, or employee of a wildlife complaint, the appropriate department staff will contact the landowner, lessee, or employee as soon as is reasonably possible. Department staff will arrange an inspection of the property as promptly as possible, and as agreed to by the landowner, lessee, or employee.~~

~~(2) Upon completion of inspection and provided the inspection resulted in confirmation of depredation as defined pursuant to this regulation, the department will, within ten (10) days, offer a minimum of three (3) formal interventions, if practical, that are reasonable and effective, for preventing, resolving or correcting the wildlife caused damage.~~

~~(3) Within ten (10) days following receipt of interventions, the landowner, lessee, or employee shall notify the department, in writing or on an approved form, of acceptance or rejection of each intervention offered.~~

~~(4) The department will initiate interventions accepted by the landowner, lessee, within five (5) days of receipt of acceptance, or such later time as reasonable based on the intervention accepted.~~

~~(5) If the landowner, lessee, or employee rejects all interventions offered by the department, the landowner, lessee, or employee must submit written grounds for good cause for rejection. The department shall take no further action until justifications for rejection have been met pursuant to this regulation and been approved by the director. If the grounds for good cause are approved the landowner may continue working with the department to develop alternative interventions or take action pursuant to 17-2-7.2B.~~

### B. Exceptions:

~~(1) [In the case of a threat or immediate threat to human life, or an immediate threat of damage to property, by a game animal where the property damage is greater in value than the value of any wildlife related income or fee collected by the landowner or lessee, a landowner, lessee, or employee may take action to immediately kill or take the game animal or quadruped and report such killing to the department within 24 hours and before removal of the carcass. In the event the department cannot be contacted within 24 hours of the destruction of an animal, the landowner, lessee or employee shall care for the carcass so as to salvage any edible portions and preserve them for disposal by the department in accordance with the law, which may include sale to the highest bidder. If a game animal is killed pursuant to this Paragraph, the department shall publish annually a legal notice of the incident in a~~

~~newspaper of general circulation and locally within the state. The notice shall describe each incident, the county of the occurrence, and the number of big game or waterfowl taken.] In the case of an immediate threat to human life, or an immediate threat of damage to private property, including crops, by a game animal or other quadruped, game bird, or fowl, a landowner or lessee, or employee of either, may take or kill the game animal, quadruped, game bird or fowl, and must report such killing to the department's toll free phone number within 24 hours. If the taking or killing is not reported within two (2) hours, the landowner or lessee, or employee of either shall field dress the carcass so as to salvage any edible portions and preserve them for disposal by the department in accordance with the law, which may include sale to the highest bidder. In no case shall the landowner or lessee, or employee of either refuse or prevent the department motorized vehicle access to any carcasses taken pursuant to this rule and the department shall not be responsible for removal of any carcass, or parts thereof, if it is determined by the department to be unfit for human consumption. If game animals are killed pursuant to this Paragraph, the department shall publish at least quarterly, a notice of the incidents. The notice shall describe each incident, the county of the occurrence, landowner, lessee, or employee of either involved, and the number of game animals, quadrupeds, game birds, or fowl taken.~~

(2) In the case of ~~[immediate]~~ threat of damage to property or crops, that is not immediate, a landowner may take any non-lethal action to discourage the protected animal or quadruped, and continue such action until the ~~[department]~~ agreed upon intervention method begins. If the department does not resolve the threat within one year, and the property depredation meets the conditions set forth in 17-2-7.2 B (6) NMSA 1978, the landowner, lessee, or employee may take action as prescribed in 17-2-7.2 B (7) NMSA 1978 by taking or killing the offending animals. ~~[In the event that non-lethal methods are impractical or ineffective, a landowner, lessee or employee may take lethal action.] All reporting, field dressing, and department access requirements identified above shall apply.~~ Nothing in this provision shall be interpreted to limit any protections afforded by the constitution.

(3) Nothing shall prevent the department from taking action to discourage the offending animals during the pendency of the written intervention agreement.

(4) Nothing shall prevent a landowner, lessee, or employee from continuing to work with the department after one year, thereby preventing the destruction

of the animals, if agreed by the parties.

(5) Nothing in this regulation shall authorize taking or harassing any animals contrary to the federal Endangered Species Act or Migratory Bird Treaty Act or contrary to any other federal or state law.

(6) Conflicts of interest: to avoid conflict of interest or the harvesting of wildlife for personal gain, the landowner, lessee, employee, ~~[and]~~ all family members ~~[should not be]~~ and any person involved in the killing of the offending animal are not allowed to take possession or bid on the animals killed.

#### C. Interventions:

~~[Intervention methods may include but are not limited to those listed.]~~ Intervention methods offered by the department shall be ~~[used]~~ designed to achieve fiscally responsible, reasonable, effective, and, if practical, long-term solutions to depredation on private lands and shall be incorporated into the written agreements ~~[as explained in paragraphs 4 and 5 of subsection A of 19.30.2.8 NMAC. A landowner may reject any of the public processes listed herein prior to a written intervention plan and need not show good cause for such rejection. Upon verbal or written notice of rejection of public involvement as a possible resolution, the Department will not offer such a process in the written intervention plan]~~ pursuant to this regulation.

~~(1) Scare or Deterrent Tactics— Zon gun, cracker shells, fuse rope, chemical repellents, noise devices, to include audio and visual devices, etc.~~

~~(2) Fencing modifications—to include technical advice, loan of panels or fence materials, work with Highway Department, etc.~~

~~(3) Technical assistance is to include habitat manipulation, grazing or crop rotation, winter feeding, if applicable, use of public process for resolution.~~

~~(4) Management modification— landowner hunt system, if one exists, depredation hunts, regular hunt season modification.~~

~~(5) Utilize local and statewide citizen intervention to develop resolution strategies, which could include volunteer assistance.~~

~~(6) Trapping and transplanting.~~

~~(7) Utilize private companies through contract to resolve damage recurrence.~~

~~(8) Other options as agreed upon by the parties and as developed through the resolution process. These options include but are not limited to those ideas developed through public input, State Game Commission meetings, sportsman and livestock groups, etc.]~~

**D. Causing a nuisance game animal problem:** It shall be unlawful for any person, by ~~[intention]~~ their

~~action or lack of action, whether intentionally or through negligence, to cause a nuisance game animal or depredation problem by baiting, feeding, or otherwise enticing game animals to an area, and such persons, if convicted, may be punished under 17-2-10 NMSA 1978. The department shall not be required to offer or provide interventions to depredation complaints caused by landowner, lessee, or employee of either violating this prohibition.~~

~~[9-1-89, 9-15-97; 19.30.2.8 NMAC - Rn, 19 NMAC 30.2.8, 7-16-01; A, 07-31-02; A, 12-31-08]~~

#### 19.30.2.9 [PROCEDURE:

##### A. Number of Methods:

~~The Department will offer a minimum of three (3) intervention methods, including one for immediate relief and one for a permanent solution. The goal of these methods is to provide a permanent resolution to animal damage problems.~~

##### B. Rejection of

~~Intervention Method: The landowner may reject for good cause any intervention method that does not accomplish the goal as stated in Subsection A of 19.30.2.9 NMAC. The rejection must be in writing and submitted to the appropriate area office of the Department within 2 days of the landowner's receipt of the intervention proposal. The written rejection must explain the good cause, as defined in Subsection N of 19.30.2.7 NMAC.] [RESERVED]~~

~~[9-15-97; 19.30.2.9 NMAC - Rn, 19 NMAC 30.2.9, 7-16-01; A, 07-31-02; Repealed, 12-31-08]~~

#### 19.30.2.10 [FAILURE TO ADEQUATELY RESOLVE THE PROBLEM:

~~If the landowner, lessee, or employee demonstrates the Department has failed to adequately resolve the problem within one (1) year, a permit shall be issued to kill the offending animal or animals. The permit shall include instructions for disposal of any carcass taken.] [RESERVED]~~

~~[9-15-97; 19.30.2.10 NMAC - Rn, 19 NMAC 30.2.10, 7-16-01; Repealed, 12-31-08]~~

#### 19.30.2.11 [QUARTERLY REPORTS:

~~The Director of the Department shall make quarterly reports to the Commission with the following information:~~

~~A. Total number by species of animals taken under this regulation;~~

~~B. Total number of interventions by technique used;~~

~~C. Total number of successful interventions for the quarter;~~

~~D. Total number of unsuccessful interventions for the quarter;]~~

**REPORTS:** A department representative

shall make regular reports to the commission regarding recent wildlife complaints, their nature, resolution status and any other pertinent information per commission request.

[9-15-97; 19.30.2.11 NMAC - Rn, 19 NMAC 30.2.11, 7-16-01; A, 12-31-08]

### 19.30.2.13 BIG GAME DEPRE- DATION DAMAGE FUND:

#### A. Expenditures:

Allowable expenditures from the big game depredation damage fund shall be restricted to the procurement of goods and services intended to resolve or mitigate depredation in accordance with [~~Subsection C of 19.30.2.8 NMAC, including leasing of forage and water, and building of barriers~~] 17-3-13.4.B NMSA 1978, 17-2-7.2.B NMSA 1978, and 19.30.2 NMAC. Direct compensation shall not be allowed.

~~(1) Expenditures shall be made available to correct or prevent damage to federal, state or private lands caused by big game.~~

~~(2) Supplies and material may be placed, installed, erected or utilized on federal, state or private lands only after a written agreement between the complainant and the Department has been signed.~~

~~(3) (1) No intervention method shall be approved if funding is not available.~~

~~(4) (2) If funding is limited, big game depredation damage [agreements/projects] agreements will be funded and given a priority [magnitude of the problem, historic depredation reporting and amount of available funding] based upon the level of verifiable and irreversible financial loss, history of documented depredation reporting by the landowner, lessee or employee, agreement by landowner, lessee or employee to provide in-kind contributions, such as costs or labor, and by availability of funds.~~

~~(5) A permanent intervention method or solution shall be given funding and consideration priority.~~

~~(6) Forage leases and agreements shall be limited to a maximum of two (2) consecutive years and shall not exceed \$5,000.00. A forage lease or agreement shall only be allowed one time, only in conjunction with an agreement of the landowner to accept a permanent depredation intervention solution (i.e. game proof fence, etc.), and based on the legal amount of value. The value of all forage leases shall be determined or estimated using scientific methodology, range consumption or utilization modeling and measuring.]~~

#### B. Written agreements:

All written agreements that result in the expenditure of funds from the big game depredation damage fund shall be signed by

both the director of the department, or his designee, and the landowner, and the lessee as to an existing leasehold interest, or an authorized representative of [the landowner] each. Each agreement shall specify the exact location [of] where the intervention method [to be utilized,] will be implemented, the standard and specifications [of] with which it will be implemented (i.e. fence-height, width, length, gate design, etc.), estimated cost per intervention, life expectancy of intervention, and maintenance and repair responsibilities. Prior to implementation of any intervention method, an owner or their representative, and lessee if applicable, must provide verifiable proof as to the land status and ownership of the property. If any conflict in documentation, map, deed or survey is found to exist, the owner shall [either sign an affidavit attesting to ownership and liability of all installation of materials and supplies, or] have a survey completed depicting land ownership status and submit the results to the department prior to implementation of any intervention method.

[19.30.2.13 NMAC - N, 12-14-01; A, 07-31-02; A, 12-31-08]

## NEW MEXICO GENERAL SERVICES DEPARTMENT PROPERTY CONTROL DIVISION

### TITLE I GENERAL GOVERNMENT ADMINISTRATION

#### CHAPTER 5 PUBLIC PROPERTY MANAGEMENT

#### PART 24 CONDUCT ON AND USE OF STATE PROPERTY

**1.5.24.1 ISSUING AGENCY:** General Services Department, Property Control Division.

[1.5.24.1 NMAC - N, 1/1/09]

**1.5.24.2 SCOPE:** All state property under the authority of property control division. General applicability: This rule applies to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of this rule. State agencies must post the notice as required by PCD at each public entrance to each state facility.

[1.5.24.2 NMAC - N, 1/1/09]

**1.5.24.3 STATUTORY AUTHORITY:** Section 15-3B-4(A) (2) NMSA 1978, which allows the division to regulate the use or occupancy of buildings and real property under its jurisdiction and make reasonable requirements for the continuation of that use or occupancy; and 15-3B-4(A) (7) which allows the division to make rules for the conduct of all persons in

and about buildings and grounds under its jurisdiction necessary and proper for the safety, care and preservation of the buildings and grounds and for the safety and convenience of the persons while they are in and about the buildings and grounds; (1978 Comp., Section 15-3-2; 1953 Comp., Section 6-2-26; enacted by Laws 1968, Chapter 43, Section 2; amended by Laws 1971, Chapter 285, Section 2; Laws 1973, Chapter 209, Section 1; Laws 1977, Chapter 247, Section 69; Laws 1977, Chapter 385; Section 14; Laws 1978, Chapter 166, Section 14; and Laws 1980, Chapter 151, Section 16.)

[1.5.24.3 NMAC - N, 1/1/09]

**1.5.24.4 DURATION:** Permanent.

[1.5.24.4 NMAC - N, 1/1/09]

**1.5.24.5 EFFECTIVE DATE:** January 1, 2009, unless a later date is cited at the end of a section.

[1.5.24.5 NMAC - N, 1/1/09]

**1.5.21.6 OBJECTIVE:** The objective of this rule is to establish a fair, uniform, clear direction and effective process to govern conduct on and use of state real property under the jurisdiction of the property control division.

[1.5.24.6 NMAC - N, 1/1/09]

**1.5.24.7 DEFINITIONS:**

A. "Agency" means a state executive agency other than the state land office, state armory board, the office of cultural affairs, the state fair commission, the department of game and fish, the department of transportation, the commissioner of public lands, the state parks division of the energy, minerals and natural resources department, the state institutions of higher learning, the New Mexico school for the deaf, the New Mexico school for the visually handicapped, the judicial branch, the legislative branch, property acquired by the economic development department pursuant to the Statewide Economic Development Finance Act (6-25-1 NMSA 1978) and property acquired by the public school facilities authority pursuant to the Public School Capital Outlay Act (22-24-1 NMSA 1978).

B. "Alterations and modifications" means work performed to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it can be used more effectively for its currently designated purpose or adapted to a new use. Alterations may include work referred to as improvement, conversion, remodeling, and modernization but are not maintenance. Also included is work to replace or restore

damaged, worn-out building components to a normal operating condition. Such repairs are curative, while maintenance is preventative.

C. **"Authorized persons"** means a non-state employee given written authorization by the lead agency and or the PCD to enter a property when the property is closed to the public.

D. **"Charitable purpose"** means any purpose for which a charitable organization has been established to directly promote the well-being of the public at large or the benefit of an indefinite number of persons and may not result in any profit to the non-profit organization.

E. **"Director"** means the director of the property control division (PCD).

F. **"Improvements"** means all land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all "interests" in the property.

G. **"Lead agency"** means the agency designated by the division to occupy a state building or campus subject to the jurisdiction of PCD who is responsible for ensuring that the building(s) are maintained to standard and that all costs associated with the operation of the building(s) are paid.

H. **"Major repairs"** means work necessary to restore a facility, system or component to its intended use.

I. **"Maintenance, operations and repair"** means those activities essential for the routine use for which a facility was designed, including preventive maintenance activities and related work that is required to preserve a facility in a condition such that it can be effectively used for its intended purpose. Examples of expenses that are included are utilities, custodial services, security, pest control, trash-recycle removal, preventive maintenance, minor repairs and related administrative costs.

J. **"Preventative maintenance"** means a planned program of periodic inspections, servicing, maintenance and performance testing.

K. **"Property control division (PCD)"** means the division of the general services department established in Chapter 15, Article 3 NMSA 1978.

L. **"Smoke" or "Smoking"** means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

M. **"Solicitation"** means any activity which may be considered or reasonably interpreted as being for the advertisement, promotion, or sale of products, or services, or for the participation in a

commercial venture of any kind. The distribution or posting of handbills, leaflets, circulars, advertising or other printed materials for the purpose cited in Paragraph (2) of Subsection A and Paragraph (5) of Subsection B of 1.5.24.9 NMAC is construed as solicitation.

N. **"State property"** also referred to as property and premises, is all premises and grounds maintained by, or for the use of, a state agency, department or division under the jurisdiction of PCD.

O. **"Vendor"** means someone who promotes or exchanges goods or services for money or other valuable consideration.

[1.5.24.7 NMAC - N, 1/1/09]

#### 1.5.24.8 ASSIGNMENT OF BUILDING:

The division shall assign a lead agency in each building under its jurisdiction. The lead agency shall be responsible for compliance with, this rule and shall take all steps necessary to comply with all requirements herein. The lead agency shall be responsible for ensuring that the building(s) are maintained to standard and that all costs associated with the operation of the building(s) are paid. The lead agency for all buildings maintained by New Mexico building services division shall be the building services division.

[1.5.24.8 NMAC - N, 1/1/09]

#### 1.5.24.9 SOLICITING, VENDING AND DEBT COLLECTION:

A. Policy.

(1) All persons entering in or on state property are prohibited from soliciting or requesting or receiving political donations.

(2) No solicitation materials may be posted except on designated bulletin boards.

(3) With the exception of bulletin boards designated for posting solicitation materials, no state materials, supplies, services or equipment may be used for solicitation purposes other than activities authorized by an agency of the state for state-connected business or state-sponsored charitable purposes.

(4) Any and all violations observed shall be reported immediately to the PCD.

B. Permissible non-employment related activities: persons or charitable organizations wishing to seek permission to use premises for an activity must submit an application to PCD, a copy of the application may be obtained from PCD. No activity as listed in Paragraphs (1) through (8) of this subsection shall commence until approval is granted.

(1) Charitable purposes.

(2) Organized employee participation in sports activities representing their

state agency or a charitable organization including departmental or charity ball teams.

(3) Activities conducted at the direction of the head of a state agency.

(4) Sale of small craft items during breaks and lunch in employee lounges and break areas by employees of the state.

(5) State employees may post handbills, leaflets, circulars, advertising or other printed materials on specifically designated bulletin boards regarding the offering or sale of personal items such as free kittens or bikes for sale, or personal announcements such as wedding announcements or ride share requests. This does not apply to announcements relating to a personal business.

(6) Employee recognition events conducted by a state agency such a national secretaries week luncheons which are approved by the supervisor of the employees affected.

(7) Labor union activities if permitted by the agreement between the union and state of New Mexico.

(8) No vending machines may be permitted except as permitted by the New Mexico commission for the blind as per Chapter 80 of Laws of 1957 (Horace De Vargas Act).

[1.5.24.9 NMAC - N, 1/1/09]

#### 1.5.24.10 ADMISSION TO PREMISES BY LEAD AGENCIES:

A. Lead-agency may close property or the affected portion thereof, to the public during normal work hours, on a temporary basis, when needed to protect the property and or the safety of individuals on the property.

B. If the property is closed for more than 24 hours, the lead-agency will ensure that the property or the affected portion, is restricted to "authorized persons" who must register upon entry to the property and must, when requested, display government or other identifying credentials to the New Mexico state police or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

C. The lead-agency shall notify the PCD as soon as possible, but not later than the next business day following the closure of the property.

D. The lead-agency may approve the use of the property after-normal working hours, as authorized by Subsection E of this section.

E. The lead-agency may authorize the use of the building or portions thereof for use by other state agencies and or non-profit organizations, subject to the provisions of the Property Control Act and this rule.

[1.5.24.10 NMAC - N, 1/1/09]

**1.5.24.11 PRESERVATION OF PROPERTY:** All persons entering in or on state property are prohibited from:

- A. improperly disposing of rubbish on property;
- B. willfully destroying or damaging property;
- C. stealing property;
- D. creating any hazard on property to persons or things;
- E. throwing articles of any kind from or at a building or the climbing upon statues, fountains or any part of the building;
- F. roller-skating;
- G. skateboarding.

[1.5.24.11 NMAC - N, 1/1/09]

**1.5.24.12 CONFORMITY WITH SIGNS AND DIRECTIONS:**

Persons in and on property must at all times conduct themselves in accordance with the law and comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of state police officers and other authorized individuals.

[1.5.24.12 NMAC - N, 1/1/09]

**1.5.24.13 DISTURBANCES:**

All persons entering in or on state property are prohibited from loitering, pan handling, exhibiting disorderly conduct or exhibiting other conduct on property which:

- A. creates loud or unusual noise or a nuisance;
- B. unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;
- C. otherwise impedes or disrupts the performance of official duties by government employees; or
- D. prevents the general public from obtaining the administrative services provided on the property in a timely manner.

[1.5.24.13 NMAC - N, 1/1/09]

**1.5.24.14 NARCOTICS AND OTHER DRUGS:**

Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on state property are prohibited from:

- A. being under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or other illegal substances;
- B. using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or other illegal substance;
- C. operating a motor vehicle on the property while under the influ-

ence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or other illegal substances.

[1.5.24.14 NMAC - N, 1/1/09]

**1.5.24.15 EXPLOSIVES:** No person entering or while on state property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

[1.5.24.15 NMAC - N, 1/1/09]

**1.5.24.16 WEAPONS IN STATE BUILDINGS:**

Persons carrying a concealed weapon in state buildings are required to be in compliance with the New Mexico Concealed Handgun Carry Act of 2003, Chapter 29, Article 19 and 10.8.2 NMAC.

[1.5.24.16 NMAC - N, 1/1/09]

**1.5.24.17 NONDISCRIMINATION:**

State agencies shall not discriminate by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

[1.5.24.17 NMAC - N, 1/1/09]

**1.5.24.18 SMOKING:**

The lead agency shall be required to comply with Chapter 24 Article 16 NMSA 1978 as amended by Laws of 2007 Chapter 20 "The Dee Johnson Clean Indoor Air Act". Designate smoking areas will be established a minimum of 50 feet away from any entrance, ventilating systems or operable window in a building and the lead agency shall provide notice to all employees in the building, regarding this location.

[1.5.24.18 NMAC - N, 1/1/09]

**1.5.24.19 DOGS AND OTHER ANIMALS:**

Except dogs used for law enforcement purposes, seeing eye dogs, other guide dogs, and animals used or being trained to guide or assist handicapped persons, persons may not bring dogs or other animals on state property for other than official purposes.

[1.5.24.19 NMAC - N, 1/1/09]

**1.5.24.20 PHOTOGRAPHS FOR NEWS, ADVERTISING, OR COMMERCIAL PURPOSES:**

Except where security regulations apply or a state court order or rule prohibits it, persons entering in or on state property may take photographs with the permission of the state agency of:

- A. space occupied by a tenant agency but only with the permission

of the occupying agency concerned;

B. space occupied by a non-state agency for commercial purposes with written permission of an authorized official of the occupying agency concerned; and building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

[1.5.24.20 NMAC - N, 1/1/09]

**1.5.24.21 PARKING:** Reserved parking - the lead agency may designate reserved parking for the following purposes:

- A. visitor parking: an equal number of visitor spaces to parking for the disabled will be provided if designated;
- B. registered van or car-pools;
- C. alternative fuel vehicles;
- D. cabinet secretary;
- E. deputy cabinet secretary;
- F. elected officials headquartered in the building;
- G. up to two additional spaces for elected officials to be designated for use by the elected official headquartered in the building;
- H. loading areas;
- I. state vehicles.

[1.5.24.21 NMAC - N, 1/1/09]

**1.5.24.22 MAINTENANCE OF ASSIGNED BUILDINGS AND CAMPUSES:**

A. The lead agency shall be responsible for securing an appropriate budget for all maintenance, operation and preventative maintenance costs as defined herein. Budget requests will consider the following if applicable:

- (1) custodial services;
- (2) custodial cleaning supplies;
- (3) landscape and grounds;
- (4) building maintenance;
- (5) routine building maintenance supplies;
- (6) heating, cooling and ventilation system equipment maintenance;
- (7) generator maintenance;
- (8) sewage system maintenance;
- (9) security services;
- (10) fire suppression systems maintenance including fire extinguisher inspection;
- (11) utilities;
- (12) recycle program: recycle program shall comply with the New Mexico Solid Waste Act;
- (13) in compliance with any facility related governor's executive orders.

B. The property control division will be responsible for alterations, modifications, and major repairs. Funding

for these types of projects may require legislative appropriation.

C. Lead agency shall comply with the PCD "facility maintenance standards" (an electronic copy may be obtained from PCD). Should the lead agency fail to follow the facilities maintenance standards, thereby ensuring that the buildings are being maintained to standard, the property control division may have a budget amount necessary to maintain the facility and grounds transferred to a new lead agency the general services department, building services division so that they will be able to ensure that they have the budget to take over the maintenance of the buildings(s) or campus that the lead agency occupies thereby ensuring compliance with the "facilities maintenance standards" manual. Cost of utilities may remain with the state agency in order to more appropriately manage energy conservation directives.

D. With the assistance and approval of the property control division the lead agency shall be responsible for seeking operating funds in an amount comparable with the national average for operating costs as published by the building owners and managers association (BOMA) "annual experience and exchange report for office buildings". Non-office buildings including 24 hour use facilities, will seek operating budgets as appropriate for their facility.

E. By July 1 of each calendar year, the lead agency shall provide to the property control division a maintenance report on the form provided by the division that includes the following items:

- (1) budget for maintenance and operation for upcoming fiscal year;
- (2) list of all buildings, including square footage of buildings to be maintained;
- (3) contact name of person responsible for operation and maintenance of building(s);
- (4) number of state employees or contract workers assigned to perform building maintenance, landscape maintenance, custodial services and security;
- (5) list of critical maintenance contracts utilized for the purpose of maintaining the assigned building(s);
- (6) list of major repairs needed for each building.

[1.5.24.22 NMAC - N, 1/1/09]

**1.5.24.23 Waiver:** Notwithstanding any provision of this rule, a waiver of any provision thereof, may be made in writing by the director, if it determines in writing that the strict holding of the provision would be unreasonable under the circumstances and that the provision is not needed to protect the facility, grounds or the public. The applicant has the burden to establish that the waiver should be granted.

The request for waiver shall be made in writing as part of the "facility use application" and must provide the necessary information and documentation to support such waiver. The decision of the director may not be appealed and is final.

[1.5.24.23 NMAC - N, 1/1/09]

**HISTORY OF 1.5.24 NMAC:**  
[RESERVED]

**NEW MEXICO  
DEPARTMENT OF HEALTH  
PUBLIC HEALTH DIVISION**

**TITLE 7 HEALTH  
CHAPTER 30 FAMILY AND CHILDREN HEALTH CARE SERVICES  
PART 9 BIRTHING WORKFORCE RETENTION FUND**

**7.30.9.1 ISSUING AGENCY:** New Mexico Department of Health, Public Health Division, Family Health Bureau, Maternal/Child Health Program.

[7.30.9.1 NMAC - N, 12/31/2008]

**7.30.9.2 SCOPE:** These rules apply to certified nurse-midwives and physicians licensed in New Mexico who provide birthing services and apply for funds from the birthing workforce retention fund.

[7.30.9.2 NMAC - N, 12/31/2008]

**7.30.9.3 STATUTORY AUTHORITY:** The regulations set forth herein are promulgated by the secretary of the department of health by authority of Section 9-7-6E NMSA 1978, and implement Section 41-5-26.1 NMSA 1978.

[7.30.9.3 NMAC - N, 12/31/2008]

**7.30.9.4 DURATION:** Permanent.

[7.30.9.4 NMAC - N, 12/31/2008]

**7.30.9.5 EFFECTIVE DATE:** December 31, 2008, unless a later date is cited at the end of a section.

[7.30.9.5 NMAC - N, 12/31/2008]

**7.30.9.6 OBJECTIVE:** These rules are promulgated pursuant to statute for the purpose of establishing criteria for the application for and award of money from the birthing workforce retention fund.

[7.30.9.6 NMAC - N, 12/31/2008]

**7.30.9.7 DEFINITIONS:**

A. "Certified nurse-midwife (CNM)" means an individual educated in the two disciplines of nursing and midwifery, who possesses evidence of ACNM or American college of nurse-midwives certification council, inc. (ACC) certification.

B. "Department" means the New Mexico department of health.

C. "Fund" means the birthing workforce retention fund, as established by Section 41-5-26.1 NMSA 1978, which provides malpractice insurance premium assistance to eligible awardees.

D. "Indigent" means those individuals having a household income under 235% of federal poverty guidelines who are not covered by any private third party health insurance and who are not eligible for medicaid coverage.

E. "Physician" means a medical doctor licensed under the New Mexico Medical Practice Act to practice medicine in New Mexico.

F. "Program" means the maternal/child health program of the family health bureau of the public health division of the New Mexico department of health.

G. "Secretary" means the secretary of the department of health.

[7.30.9.7 NMAC - N, 12/31/2008]

**7.30.9.8 ELIGIBILITY:** In order to be eligible for award of money from the fund, the applicant must:

A. be a certified nurse-midwife licensed in New Mexico or a physician licensed in New Mexico;

B. demonstrate need by showing that medicaid or indigent patients constitute at least one-half of the obstetric practice of the applicant;

C. have a current malpractice liability insurance policy covering birthing services; and

D. demonstrate that his/her malpractice insurance premiums covering birthing services have increased every year for two years.

[7.30.9.8 NMAC - N, 12/31/2008]

**7.30.9.9 APPLICATIONS:**

A. Requirements: The applicant shall present to the program, via mail or fax, a completed department application which is available on the department's website at [www.health.state.nm.us](http://www.health.state.nm.us) or by contacting the program at (505) 476-8906. Along with the application the applicant must submit:

(1) a copy of the applicant's current New Mexico license to practice certified nurse-midwifery or medicine;

(2) proof of the applicant's current malpractice liability insurance policy covering birthing services;

(3) proof that the applicant's malpractice liability insurance premiums covering birthing services have increased every year for any two consecutive years by providing proof of the amounts of liability insurance premiums covering birthing services for each of the previous four years, or, if the applicant has not provided birthing

services for all of the previous four years, such premiums for at least two consecutive years;

(4) proof of both the number and the percentage of medicaid and indigent patients seen in the applicant's birthing practice in each of the previous two years;

(5) proof of all payments and any funding the applicant received for delivery services for each of the previous two years; and

(6) proof that the applicant provides both prenatal and birthing services in his/her practice.

**B. Deadline for application:** Deadline for application will be available through the program and will be listed on the application.

[7.30.9.9 NMAC - N, 12/31/2008]

**7.30.9.10 COMMITTEE TO REVIEW APPLICATIONS:** The secretary or the secretary's designee shall appoint a committee to evaluate applications and select awardees. The committee shall consist of such members as chosen by the secretary or the secretary's designee, including, at a minimum:

A. a member of the maternal child health program of the department; and

B. a member of the health systems bureau of the department.

[7.30.9.10 NMAC - N, 12/31/2008]

**7.30.9.11 EVALUATION OF APPLICATIONS:**

A. Basis for disbursal: Awards shall be disbursed based on the percentage of the CNM or physician's patients seen for birthing services who are covered by medicaid or are indigent, with a minimum of fifty percent of the practitioner's obstetric practice consisting of medicaid or indigent patients.

B. Criteria upon which the committee shall evaluate and prioritize the need of the applicant and the merits of the application:

(1) the relative availability of birthing services for medicaid and indigent patients in the applicant's community, based on the department's annual study of geographic access to birthing care providers;

(2) the amount the applicant's malpractice liability insurance premiums have increased;

(3) the number of medicaid and indigent patients seen in the practice for birthing services;

(4) the ratio of the revenue received from deliveries to the liability insurance premium; and

(5) the provision of comprehensive prenatal and delivery services to clients who present for them.

[7.30.9.11 NMAC - N, 12/31/2008]

**7.30.9.12 PRIORITY OF AWARDS:** Priority for the award of money from the birthing workforce retention fund shall be in the following order:

A. to certified nurse-midwives; and

B. to family practice physicians and obstetricians.

[7.30.9.12 NMAC - N, 12/31/2008]

**7.30.9.13 AWARDS:** Subject to availability of funds, each award shall be a minimum of five thousand dollars (\$5,000) and shall not exceed ten thousand dollars (\$10,000).

A. Awardees will be notified within forty-five days after the application deadline.

B. Awardees shall submit proof of payment of malpractice liability insurance covering birthing service to the program within nine months of receipt.

[7.30.9.13 NMAC - N, 12/31/2008]

**HISTORY OF 7.30.9 NMAC:**  
[RESERVED]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to Sections 8 through 14 of 8.139.120 NMAC, effective December 31, 2008.

**8.139.120.8 RECERTIFICATION:** When a household's certification period expires, its eligibility to participate in the food stamp program ends. Food stamp benefits will not be continued beyond the certification period. Timely applications for recertification will be approved or denied before the end of the current certification period.

**A. Notice and time standards:** Every household will be provided with a notice of expiration, as follows:

(1) For a household certified for one or two months, the notice of expiration will be provided at the time of certification. The household will have 15 days from the date the notice is received to submit a timely application for recertification. The household will be approved and provided an opportunity to participate, if eligible, or be denied, within 30 days after obtaining its last food stamp benefit amount.

(2) For all other households, a notice of expiration will be sent by HSD prior to the start of the last month of the household's certification period. A household has reapplied timely if the application for recertification is filed by the 15th day of the last month of the household's certification period.

(3) The caseworker will complete the application process if the household meets all requirements and finishes the necessary processing steps; the caseworker will approve or deny timely applications before the end of the household's current certification period.

**B. Failure to submit timely application:**

(1) A household that does not submit a timely application for recertification by the 15th day of the expiration month loses its right to uninterrupted benefits.

(2) Food stamp benefits will be prorated from the date of application if a household's application is received in the month after its certification period has expired or participation has been terminated for any reason.

(3) The ~~[HSD]~~ caseworker will ensure that any eligible household that does not submit a timely application for recertification be provided the opportunity to participate, if eligible, within ~~[thirty (30)]~~ 30 calendar days after the date the application is filed.

**C. HSD failure to act:** A household that has made a timely application for recertification, but because of agency error, is not determined eligible in sufficient time to provide for issuance by the household's normal issuance cycle in the following month, will receive an immediate opportunity to participate. A household will be entitled to restoration of lost benefits if, as a result of such error, it was unable to participate for the month following the expiration of the certification period, or benefits were prorated in the month after expiration.

**D. Scheduling interviews:** An interview will be scheduled on the date or after a timely application for recertification is filed by a household. A household will not be required to appear for an interview, or to file an application for recertification, in the month before the last month of its current certification period. An interview may be scheduled in the month before the last month of certification, or prior to the date the application is timely filed, provided the household is not denied for failing or refusing to appear for the interview. If an interview was scheduled, or if household member or authorized representative failed to attend an interview which was scheduled prior to the date a household files a timely application, the caseworker will schedule an interview on or after the date an application is timely filed.

**E. Failure to appear:** If a household member or authorized representative fails to appear for a recertification interview scheduled on or after a timely application is filed, the household loses the right to uninterrupted participation. The

caseworker does not need to take any further action to schedule another interview, unless the household member or authorized representative requests another interview.

**F. Prospective eligibility determination:** A household's eligibility and food stamp benefit amount at recertification will be determined prospectively based on circumstances anticipated for the certification period, beginning with the month following the expiration of the current certification period.

**G. Eligibility and benefits:** Eligibility will be determined at recertification according to the standards described below.

**(1) Timely reapplication:** Applications filed before the 15th of the expiration month will be considered timely. A household member or authorized representative that attends an interview and provides all necessary verification by the end of the household's current certification period, will have the opportunity to participate by the household's normal issuance cycle in the month following the end of the current certification period, if all eligibility factors have been met.

**(2) Reapplication after the 15th:** If an application for recertification is submitted after the 15th but before the end of a household's certification period and the household is determined eligible for the first month following the end of the certification period, that month is not considered an initial month and benefits are not prorated.

**(3) First month ineligibility:** If an application for recertification is submitted before the end of a household's certification period, but the household is determined ineligible for the first month following the end of the certification period, the first month of any subsequent certification period will be considered an initial month and food stamp benefits will be prorated.

**(4) Late applications:**  
**(a)** Recertification verification standards in Paragraph 2 of Subsection I of 8.139.110.11 NMAC will be used when an application is received within ~~thirty~~ **(30)** 30 days after the certification period expires. Initial month verification standards in Subsection I of 8.139.110.11 NMAC will be used if the application is received more than one calendar month after the certification period expires or the case has been closed for any reason.

**(b)** Initial month certification provisions and proration of benefits for migrant and seasonal farmworker households will apply when more than 30 days have passed since the household was certified for participation. (See 8.139.400.14 NMAC for more information on migrant and seasonal farmworker households).

**(5) Pending verification:** A household member or authorized represen-

tative that has reapplied timely, attended an interview, and is required to provide verification, will be given 10 days to provide the verification, or until the certification period expires, whichever is longer. If the certification period expires before the 10-day deadline for submitting the required verification, the household will have the opportunity to participate, if eligible, within five working days after verification is submitted. The household is entitled to a full month's benefits.

[02/01/95, 10/01/95, 01/01/97; 8.139.120.8 NMAC - Rn, 8 NMAC 3.FSP.122, 05/15/2001; A/E, 10/15/2008; A, 12/31/2008]

**8.139.120.9 SIMPLIFIED REPORTING:** Simplified reporting ~~[is an option in]~~ includes two types of reporting requirements for households that receive food stamp benefits semiannual and annual reporting.

**A. Household responsibilities at application:**

**(1)** An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview.

**(2)** Changes occurring after the interview must be reported by the household subject to simplified reporting requirements contained in this section.

**B. Households excluded from simplified reporting:** The following household are excluded from simplified reporting, shall be certified for no longer than three months and are subject to the reporting requirements at 8.139.120.12 NMAC:

**(1)** A household determined by the county director to have insufficient stability and warrants an alternative reporting requirement[s]. ~~[an unstable household may include but is not limited to:~~

~~**(a)** **(2)** [a] A household that reports an imminent change in residence to another state[s]~~

~~**(b)** a household in which all members are homeless;~~

~~**(c)** a household in which all members are ABAWDs with no earned or unearned income and reside in a non-exempt and non-waived administrative area; and~~

~~**(d)** a household in which all members are migrant or seasonal farm workers.~~

~~**(2)** A household that is assigned to an alternative reporting requirement because of instability, shall be certified for no longer than three months].~~

**C. Certification periods for households assigned to simplified reporting:**

~~**(1)** A household with earned income:~~

~~— **(a)** shall be assigned a 12-month certification period;~~

~~— **(b)** shall be required to submit a report in the sixth month of the 12-month certification period; and~~

~~— **(c)** shall remain subject to semiannual reporting and requirements for the assigned certification period.~~

~~**(2)** The household's food stamp benefit amount will be adjusted in accordance with mass change requirements at 8.139.120.13 NMAC.~~

~~**(3)** A household in which all members are elderly or disabled as defined at 8.139.100.7 NMAC and are determined to be categorically eligible as defined at Subsection A of 8.139.420.8 NMAC:~~

~~**(a)** shall be assigned a 24 month certification period;~~

~~**(b)** cannot have any earned income; and~~

~~**(c)** must submit an annual report in the 12<sup>th</sup> month of the 24 month certification period.]~~

~~**(1)** The following households shall be assigned a semiannual 12 month reporting period with an interim report due at 6 months:~~

~~**(a)** a household in which all members are ABAWDs;~~

~~**(b)** a household in which all members are elderly or disabled with earned income;~~

~~**(c)** a household in which all members are migrant or seasonal farm workers.~~

~~**(2)** A household in which all members are elderly or disabled as defined at 8.139.100.7 NMAC or are determined to be categorically eligible as defined at Subsection A of 8.139.420.8 NMAC shall be assigned a 24 month reporting period with an interim report due at 12 months.~~

~~**(4)** **(3)** A household may report an increase in medical expenses for a household member eligible to claim a medical deduction. Food stamp benefits will be adjusted ~~[for]~~ in the month following the month in which the change is reported ~~[only if the medical expense(s) is verified by the caseworker upon receipt of a report from the household] and verified by the caseworker.~~~~

~~**(5)** **(4)** The household's food stamp benefit amount will be adjusted in accordance with the mass change requirements as set forth in 8.139.120.13 NMAC.~~

**D. Applicant household:** A household that is approved for food stamp benefits on or after October 1, 2008 shall be assigned a certification period in accordance with the household's circumstances as stated at Subsection C of 8.139.120.9 NMAC, retroactive to the month of application.



**E. Participating household:** ~~[A participating household not assigned to simplified reporting that is subsequently assigned to simplified reporting because of a reported change shall be transitioned at the end of the certification period in effect when the change occurred.]~~ If a household reports a change that makes them ineligible for simplified reporting, they shall be assigned an alternative reporting period when they file an interim report or recertify, whichever comes first.

**F. Reporting changes for simplified reporting households:** A household assigned to simplified reporting must report, during its certification period, when the household's income reaches or exceeds the food stamp program monthly gross income limit for the size of the household. A household is required to report the change no later than ~~ten~~ 10 calendar days from the end of the calendar month in which the change occurred.

[02/01/95, 10/01/95, 06/15/96, 09/14/96, 11/01/96, 07/01/98, 06/01/99; 8.139.120.9 NMAC - Rn, 8 NMAC 3 FSP.123, 05/15/2001; 8.139.120.9 - N, 02/14/2002; A, 01/01/2004; A, 07/16/2008; A, 08/15/2008; A/E, 10/15/2008; A, 12/31/2008]

#### 8.139.120.10 REQUIREMENTS FOR SEMIANNUAL HOUSEHOLDS:

**A. Household responsibilities at application:** ~~[An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview.]~~ Changes occurring after the interview, but before the date of the approval notice, must be reported by the household within 10 days of the date the household receives its approval notice.

**B.** A household subject to semiannual reporting shall be required to file a semiannual report no later than the tenth day of the sixth month of the 12-month certification period. The following information, along with required verification, must be provided with the report:

(1) any change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(2) the gross monthly income received from employment by each household member;

(3) the gross monthly unearned income received by each household member;

(4) changes in countable resources if the total of all countable resources for the food stamp household exceeds the applicable resource limit; ~~;~~ such as but not limited to:

~~(a) the account number and balance for a new checking or savings account belonging to any household member; or~~

~~(b) the amount of any new stocks or bonds or other financial instruments belonging to any household member;~~

(5) dependent care expenses;

~~[(6) expenses for shelter, utilities, and telephone, only if a change has occurred since the last certification, or a change will occur in the month following the month the report is due, including but not limited to:~~

~~(a) a change in residence;~~

~~(b) a change in shelter expense;~~

~~(c) a change in billing for utilities, but not including variances in utility bills from month to month for the same service; or~~

~~(d) an increase in shelter expenses that will take place in the month following the report month; or~~

~~(e) a termination of any shelter, utility, or telephone expense; or~~

~~(f) a new shelter or utility expense;~~

~~(7) (6) a change in medical expenses;~~

~~[(8) (7) a change in child support obligations;~~

~~[(9) (8) student status for anyone living in the home over the age of 17 years, including but not limited to:~~

~~(a) a change in status from non-college to college student;~~

~~(b) a change in status from college student to non-college status;~~

~~(c) a change in post-secondary curriculum to or from at least halftime; and~~

~~(d) participation in or termination of work study.~~

~~[(10) (9) a change in immigrant (alien) status for a household member.~~

**C. Budgeting methodology for semiannual reporting ~~[at initial application and recertification]:~~**

(1) Prospective budgeting shall be used for an applicant household at initial application and at recertification as set forth at 8.139.500.9 NMAC.

(2) **Initial application:** ~~[At approval, eligibility]~~ Eligibility and amount of payment for the applicant household shall be determined prospectively for each of the first six months of the certification.

(3) **Processing the semiannual report:** Eligibility and food stamp benefit amount shall be determined prospectively for the six months following the month the semiannual report is due.

~~[(3) (4) Recertification: [At approval, eligibility]~~ Eligibility and amount of payment shall be determined prospectively for each of the six months following the last month of the previous certification period.

~~[D. Budgeting methodology for processing a semiannual report:~~

~~(1) Processing the semiannual report: Eligibility and food stamp benefit amount shall be determined prospectively for the six months following the month the semiannual report is due.]~~

~~[(2) D. Determining a household's eligibility and food stamp benefit amount:~~

~~[(a) Weekly: For income received weekly, the household must submit and the department shall accept as verification the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.~~

~~(b) Bi-weekly: For income received bi-weekly, the household must submit and the department shall accept as verification the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.~~

~~(c) Semi-monthly: For income received semi-monthly, the household must submit and the department shall accept as verification the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.~~

~~(d) Monthly: For income received monthly, the recipient household must submit and the department shall accept as verification the income received from any consecutive past 30 day period that includes 30 days prior to the month the report is due and the month the report is due.]~~

(1) Income received weekly, bi-weekly, semi-monthly or monthly: The household must submit and the department shall accept as verification the income received from any consecutive 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

~~[(e) (2) Income received more frequently than weekly: For households with income received more often than weekly:~~

~~[(f) (a) exact income rather than averaged and converted income shall be used to determine eligibility and food stamp benefit amount; and~~

~~[(f) (b) the household must submit, and the department shall accept as verification income received from any consecutive [past] 30 day period that includes 30 days prior to the month the semiannual report is due and the month the report is due.~~

~~[(f) (3) If a determination is made that the use of the pay data for the budgeting methods described in [(a) through (e)] (1) and (2), above, does not~~

give the most accurate estimate of monthly earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

**[~~(3)~~ (4) Income received less frequently than monthly:** The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover, including but ~~is~~ not limited to income sources from sharecropping, farming, self-employment, contract income and income for a ~~tenured~~ school employee or teacher who may not have a contract.

**[~~(4)~~ (5) Self-employment:**

(a) Requirements for determination of net self-employment income are set forth at Subsection E of 8.139.520.10 NMAC, and the verification standards for business and self-employment income are set forth at Subsection B of 8.100.130.14 NMAC.

(b) A household assigned to semi-annual reporting that has its self-employment income annualized shall be required to report changes in self-employment income on the semiannual report if the household has filed a tax return after its last approval or recertification of food stamps.

(c) A household assigned to semi-annual reporting whose self-employment income is not annualized must report self-employment income on the semiannual report. The income reported on the semiannual report will be calculated in the following manner.

(i) When a self-employment enterprise has been in existence for less than one year, the income from self-employment shall be averaged over the period of time the business has been in operation. The resulting monthly amount shall be projected for the six-month period covered by the semiannual report.

(ii) **Seasonal income:** Self-employment income that is intended to meet a household's needs for only part of the year shall be averaged over the time the income is intended to cover.

(d) A household that fails to provide verification of an allowable deduction shall not be allowed the deduction. The caseworker shall process the report if all other mandatory verification has been provided.

**[~~(5)~~ (6) Use of conversion factors:**

(a) Conversion factors shall be used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:

(i) the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and

(ii) biweekly amounts

by 2.15;

(iii) ~~semi-monthly~~ amounts by 2.

(b) Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received.

(c) ~~Instead, the~~ The amount of the extra paycheck is averaged over the certification period.

**[~~(6)~~ (7) Rounding of income when using conversion factors:** Averaged income shall be rounded prior to the application of the conversion factor. If the cents are \$.49 or less, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

**E. Time limits for processing a semiannual report received by the county office:**

(1) The semiannual report form and all verification provided shall be reviewed for completeness within ~~ten~~ 10 working days of receipt.

(a) A form that is complete and all verifications are provided, shall be processed within ~~ten~~ 10 working days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall ~~not~~ be processed, unless the verification is otherwise questionable. The household:

(i) shall be notified that verification is ~~lacking~~ questionable; and

(ii) shall be given ~~ten~~ 10 calendar days to provide the verification ~~of an~~ to process the allowable deduction.

(c) A deduction that is verified within the month the semiannual report is due shall be processed as part of the semiannual report.

(d) A deduction that is verified in the month after the semiannual report is due shall be processed as a change reported by the household.

~~[(e) A deduction that does not have the required verification shall not be allowed until verification of the expense is provided.]~~

**(2) Incomplete semiannual report is received:**

(a) A semiannual report form that is not signed shall be returned to the household for a signature.

(b) A semiannual report that is incomplete because required verification is not provided shall not be returned to the household. The household shall be notified that the form is incomplete and what information must be provided to complete the semiannual report.

(3) A household must return the completed semiannual report form by the end of the month in which the report is due in order to process the report for the follow-

ing month.

**F.** A household that fails to submit a semiannual report by the end of the month in which the report is due shall lose its right to uninterrupted benefits and shall be issued an adequate notice of closure.

**G. Information requirements for the semiannual report:** The semiannual report form shall specify:

(1) the deadline date to submit the form to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form;

(3) that verification of ~~an allowable expense must be submitted with the semiannual report, or the household may not be allowed a deduction~~ some allowable expenses may be required in order for the deduction to be allowed;

(4) where to call for help in completing the form;

(5) the consequences of providing incorrect information;

(6) the notice of rights.

**H. Disaster victims:** A household participating in the food stamp program and subject to semiannual reporting shall be required to comply with semiannual reporting requirements during the disaster period. The household remains responsible for submitting the required information set forth in 8.139.120.9 NMAC, to the field office that handles its ongoing case.

**I. Reporting requirement for semiannual reporting households:** A household assigned to semiannual reporting shall only be required to report when the household's income exceeds 130% of the federal poverty guidelines for the size of the household. A household is required to report the change no later than ~~ten~~ 10 calendar days from the end of the calendar month in which the change occurred.

**J. Action on changes reported between reporting periods for households assigned to semiannual reporting:**

(1) The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

(a) a household reports income in excess of 130% of federal poverty guidelines for the size of the household;

(b) a household reports or HSD receives documented evidence that the household has moved or intends to move out of the state on a specific date;

(c) a household requests closure;

~~or~~ (d) HSD receives documented evidence that the head of household has died; or

(e) a household that fails to comply with work requirements as specified at 8.139.410.12 and 8.102.620. 10 and 11 NMAC.

(2) A newborn shall be added to the household effective the month following the month the change is reported, if the addition is reported to the agency by the household or by the hospital for medicaid purposes.

(3) The loss of earned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification, whichever is first, provided that:

(a) the loss of income was reported and verified by the household;

(b) the loss of income was not due to voluntary quit.

(4) The loss of unearned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that the loss of income was reported to the agency, and verified by the household.

**K. Transitional food stamps:** A household assigned to semiannual reporting that is approved for transitional food stamps shall have the semiannual reporting requirements terminated during the transitional food stamp benefit period.

**L. Action on cash assistance applications:**

(1) A food stamp household assigned to semiannual reporting that is later approved for cash assistance shall be required to file the scheduled semiannual report or to recertify eligibility at the intervals set at initial food stamp application. The timing of the cash certification and semiannual reporting requirements shall be set to match the requirements of the food stamp program.

(2) A household assigned to semiannual reporting that is approved for TANF, GA, or EWP a day or more after food stamp approval shall have food stamp benefits adjusted in the month following the month of cash assistance approval.

[02/01/95, 07/01/98; 8.139.120.10 NMAC - Rn & A, 8.139.120.9 NMAC, 02/14/2002; A, 01/01/2004; A/E, 10/15/2008; A, 12/31/2008]

### 8.139.120.11 REQUIREMENTS FOR ANNUAL REPORTING HOUSEHOLDS:

**A. Household responsibilities at application:** An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview. Changes occurring after the

interview must be reported by the household subject to the annual reporting requirements in this section.

#### B. Reporting requirements for annual reporting households:

A household subject to annual reporting shall be required to file an annual report no later than the tenth day of the twelfth month of the 24-month certification period. The following information, along with verification, must be provided with the report:

(1) any change in household composition, whether a member has moved in or out of the home, and the date the change took place;

(2) the gross monthly income received from employment by each household member;

(3) the gross monthly unearned income received by each household member;

(4) changes in countable resources if the total of all countable resources for the food stamp household exceeds the applicable resource limit, such as but not limited to:

(a) the account number and balance for a new checking or savings account belonging to any household member; or

(b) the amount of any new stocks or bonds or other financial instruments belonging to any household member;

(5) dependent care expenses;

(6) expenses for shelter, utilities, and telephone, only if a change has occurred since the last certification, or a change will occur in the month following the month the report is due, including but not limited to:

(a) a change in residence;

(b) a change in shelter expense;

(c) a change in billing for utilities, but not including variances in utility bills from month to month for the same service; or

(d) an increase in shelter expenses that will take place in the month following the report month; or

(e) a termination of any shelter, utility, or telephone expense; or

(f) a new shelter or utility expense;

(7) a change in medical expenses;

(8) a change in child support obligations;

(9) student status for anyone living in the home over the age of 17 years, including but not limited to:

(a) a change in status from non-college to college student;

(b) a change in status from college student to non-college status;

(c) a change in post-secondary curriculum to or from at least halftime; and

(d) participation in or termination of work study;

(10) a change in immigrant (alien) status for a household member.

#### C. Budgeting methodology for annual reporting at initial application and interim review:

(1) Prospective budgeting shall be used for an applicant household at initial application and at interim review as set forth at 8.139.500.9 NMAC.

(2) **Initial application:** At approval, eligibility and amount of payment for the applicant household shall be determined prospectively for the each of the first 12 months of the certification.

(3) **Recertification:** At approval, eligibility and amount of payment shall be determined prospectively for each of the 12 months following the last month of the previous certification period.

#### D. Budgeting methodology for processing an annual report:

(1) **Processing the annual report:** Eligibility and food stamp benefit amount shall be determined prospectively for the 12 months following the month the annual report is due.

(2) **Determining a household's eligibility and food stamp benefit amount:**

(a) Income received weekly, bi-weekly, semi-monthly or monthly: the household must submit and the department shall accept as verification the income received from any consecutive [past] 30 day period that includes 30 days prior to the month the report is due and the month the report is due.

(b) **Income received more frequently than weekly:** For households with income received more often than weekly:

(i) exact income rather than averaged and converted income shall be used to determine eligibility and food stamp benefit amount; and

(ii) the household must submit, and the department shall accept as verification income received from any consecutive past 30 day period that includes 30 days prior to the month the semiannual report is due and the month the report is due.

(c) If a determination is made that the use of the pay data for the budgeting methods described in (a) through (b), above, does not give the most accurate estimate of monthly earnings due to unique circumstances; the caseworker shall use whatever method gives the most accurate estimate of earnings.

(d) **Income received less frequently than monthly:** The amount of monthly gross income that is received less frequently than monthly shall be determined by dividing the total income by the number of months the income is intended to cover, including but is not limited to income

sources from sharecropping, farming, self-employment, contract income and income for a tenured teacher who may not have a contract.

**(3) Use of conversion factors:**

(a) Conversion factors shall be used to adjust the monthly income amounts whenever a full month's income is received on a weekly or biweekly basis:

(i) the income shall be converted to a monthly amount by multiplying weekly averaged amounts by 4.3; and

(ii) biweekly amounts by 2.15.

(b) Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received.

(c) ~~Instead, the~~ The amount of the extra paycheck is averaged over the certification period.

**(4) Rounding of income when using conversion factors:** Averaged income shall be rounded prior to the application of the conversion factor. If the cents are \$.49 or less, the cents are dropped. If the cents are \$.50 or more, the amount shall be rounded up to the next higher dollar.

**E. Time limits for annual report received by the county office:**

(1) The annual report form and all required verification provided shall be reviewed for completeness within ~~ten~~ 10 working days of receipt.

(a) A form that is complete and all required verifications are provided, shall be processed within ~~ten~~ 10 working days of receipt.

(b) A form that is complete, and all verifications are provided except for verification of an allowable deduction, shall ~~not~~ be processed, unless the verification is otherwise questionable. The household:

(i) shall be notified that verification is ~~lacking~~ questionable; and

(ii) shall be given ~~ten~~ 10 calendar days to provide the verification ~~of an~~ to process the allowable deduction.

(c) A deduction that is verified within the month the annual report is due shall be processed as part of the annual report.

(d) A deduction that is verified in the month after the annual report is due shall be processed as a change reported by the household.

~~(e) A deduction that does not have the required verification shall not be allowed until verification of the expense is provided.]~~

**(2) Incomplete annual report is received:**

(a) An annual report form that is not signed shall be returned to the household for a signature.

(b) An annual report that is

incomplete because required verification is not provided shall not be returned to the household. The household shall be notified that the form is incomplete and what information must be provided to complete the semiannual report.

(3) A household must return the completed annual report form by the end of the month in which the report is due in order to process the report for the following month.

**F.** A household that fails to submit an annual report by the end of the month in which the report is due shall lose its right to uninterrupted benefits and shall be issued an adequate notice of closure.

**G. Information requirements for the annual report:** The annual report form shall specify:

(1) the deadline date to submit the form to ensure uninterrupted benefits if the household is determined eligible;

(2) the consequences of submitting a late or incomplete form;

(3) that verification of ~~[an allowable expense must be submitted with the semiannual report, or the household may not be allowed a deduction]~~ some allowable expenses may be required in order for the deduction to be allowed;

(4) where to call for help in completing the form;

(5) the consequences of providing incorrect information;

(6) the notice of rights.

**H. Disaster victims:** A household participating in the food stamp program and subject to annual reporting shall be required to comply with annual reporting requirements during the disaster period. The household remains responsible for submitting the required information set forth in 8.139.120.11 NMAC, to the field office that handles its ongoing case.

**I. Reporting requirement for annual reporting households:** A categorically eligible household assigned to annual reporting shall ~~[only be required to report when the household's income exceeds 100% of the federal poverty guidelines for the size of the household.]~~ have no further reporting requirement, until they must file an annual report or recertify, whichever comes first. All other households must file a report if their income exceeds 130% of the federal poverty guidelines and if the household remains eligible have no further reporting requirement until the household must file an annual report or recertify, whichever comes first. A household is required to report the change no later than ~~ten~~ 10 calendar days from the end of the calendar month in which the change occurred.

**J. Action on changes reported between reporting periods for households assigned to annual reporting:**

(1) The department shall not act on reported changes between reporting periods that would result in a decrease in benefits with the following exceptions:

(a) a household reports income in excess of 130% of federal poverty guidelines for the size of the household;

(b) a household with elderly or disabled members reports income in excess of 165% of federal poverty guidelines for the size of households;

~~(b)~~ (c) household reports or HSD receives documented evidence that the household has moved or intends to move out of the state on a specific date;

~~(c)~~ (d) a household requests closure; or

~~(d)~~ (e) HSD receives documented evidence that the head of household has died.

(2) The loss of unearned income shall be considered for eligibility in the month after the loss and ongoing until the next scheduled semiannual report or end of certification whichever is first, provided that the loss of income was reported to the agency, and verified by the household.

(3) If a household reports a change that makes them ineligible for annual reporting, they shall be assigned an alternative reporting period when they file an annual report or recertify, whichever comes first.

[02/01/95; 8.139.120.11 NMAC - Rn & A, 8.139.120.10 NMAC, 02/14/2002; 8.139.120.11 NMAC - N/E, 10/15/2008; A, 12/31/2008]

**8.139.120.12 REQUIREMENTS FOR HOUSEHOLDS ~~[EXCLUDED FROM SIMPLIFIED] ON REGULAR REPORTING:~~**

**A.** A regular reporting household includes all households not assigned to simplified reporting. If changes occur during a households certification period, that affect eligibility or benefit amount, the caseworker shall take action to adjust the household's eligibility or food stamp benefit amount.

**B. Household responsibilities:**

(1) **At application:** An applicant must report all changes affecting eligibility and food stamp benefit amount that may have occurred since the date the application was filed and before the date of the certification interview.

(2) Changes occurring after the interview, but before the date of the approval notice, must be reported by the household within 10 days of the date the household receives its approval notice.

(3) **Reporting during the certification period:** A household must report changes within ~~ten~~ 10 days of the date a change becomes known to the house-

hold. No change reporting requirements may be imposed except as provided in (a) through (f) below. A household must report:

(a) **earned income:** a change in the source of earned income, including starting or stopping a job; or

(i) changing jobs if the change in employment results in a change in income;

(ii) a change in the amount of gross earned income received by a member of the household, if the amount changes by more than \$100 per month.

(b) **unearned income:**

(i) a change in the source of unearned income;

(ii) a change of more than \$50 in the amount of unearned income except that changes in cost of living increases (COLAs), and mass changes in the social security and SSI benefits and changes in cash assistance amounts in programs administered by ISD including TANF, GA, EWP, and RRP do not have to be reported;

(c) changes in household composition, such as when an individual moves into or leaves the household;

(d) changes in residence and the resulting change in shelter costs;

(e) when cash on hand, stocks, bonds or money in a bank account reach or exceed \$2,000, or \$3,000 for elderly/disabled households;

(f) changes in the legal obligation to pay child support, including termination of the obligation; a household with less than a 3-month record of child support payments shall be required to report changes greater than \$50.00 from the amount used in the most recent certification action.

(4) **Time limits:**

(a) The 10-day period begins with the date the change becomes known to the household. For the purposes of reporting:

(i) a financial change shall be considered as timely if the change is reported no later than 10 days after the household receives the first payment or makes the first payment attributable to the change;

(ii) a non-financial change shall be considered timely if the change is reported no later than 10 days after it occurs.

(b) The change is considered reported on the date the report of change is received by the local county office or, if mailed, the date of the postmark on the household's report plus three days mailing time.

(c) Households shall be encouraged to use a change report form to document changes, although changes may also be reported by personal visit or telephone.

(d) In the absence of a written

report, a 13-day advance notice is required if the change will result in a reduction or termination of benefits.

C. **HSD responsibilities:**

The caseworker shall inform the household of its responsibility to report changes. The caseworker shall review any change reported by the household to determine if the change must be acted on and shall take the required action if the change affects eligibility or benefit amount. The caseworker shall document the date a change is reported, and whether the change affects eligibility or food stamp benefit amount.

(1) **Action on changes for regular reporting households:**

(a) When a household reports a change, the caseworker shall take action to determine the household's eligibility or food stamp benefit amount within ~~ten~~ 10 days of the date the change is reported.

(b) For changes that result in a decrease or termination of household benefits, the caseworker shall act on the change as follows:

(i) If the caseworker receives a written report from the household that meets the standards of Subsection C of 8.139.120.15 NMAC, action shall be taken for the following month without an advance notice of adverse action. The household shall be provided with adequate notice. If the certification period will expire before the expiration notice time limit, no action shall be required to reduce or terminate benefits.

(ii) If the change is reported by any other means, e.g., by phone, in person, etc., within ~~ten~~ 10 days, the caseworker shall take action to issue a notice of adverse action (Subsection B of 8.139.120.15 NMAC) to reduce or terminate benefits effective the month following the month the adverse action time limit expires. If the certification period will expire before the expiration of the adverse action time limit, no action shall be required to reduce or terminate benefits.

(c) During the certification period, the caseworker shall not act on changes in medical expenses of households eligible for the medical expense deduction which it learns of from a source other than the household and which, in order to take action, requires the caseworker to contact the household for verification. The caseworker shall act only on those changes in medical expenses that are learned about from a source other than the household, if those changes are verified upon receipt and do not necessitate contact with the household.

(2) **Increased benefits:**

(a) For changes resulting in an increase, other than changes described in (b) below, the caseworker shall make the

change effective no later than the first benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date).

(b) For changes resulting in an increase in food stamp benefits because of the addition of a new household member who is not a member of another certified household or a decrease of \$50.00 or more in the household's gross monthly income, the caseworker shall make the change effective not later than the first food stamp benefit amount issued 10 days after the date the change was reported (conforms to ISD2 mass run date). In no event shall these changes take effect any later than the month following the month the change was reported. If the change is reported timely but the increase cannot be made effective the following month, the caseworker shall issue a supplement to the household in the following month.

(c) **Providing verification:** The household shall be allowed 10 days from the date a change is reported to provide verification, if necessary. If verification is provided at the time a change is reported or by the deadline date, the increase in benefits shall be effective in accordance with (a) and (b) above. If necessary verification is not provided at the time a change is reported, the household shall be allowed 10 days, plus 3 days if a notice is mailed, to provide verification. If the household fails to provide the verification by the deadline date, but does provide it at a later date, the increase shall be effective in the month following the month the verification is provided. If the household fails to provide ~~required~~ necessary verification, its food stamp benefit amount shall revert to the original benefit amount.

(3) **Decreased benefits:** When a household timely reports a change which will decrease benefits, the caseworker shall issue an adverse action notice to the household (Subsection B of 8.139.120.15 NMAC). If the adverse action time limit expires in the following month, there is no overissuance in the following month and the household is entitled to the greater benefit amount. The decrease shall be effective in the month following the month the notice expires.

(4) **Termination of benefits:** When the household reports a change that will result in a termination of benefits, the caseworker shall issue an adverse action notice.

(a) If the adverse action time limit expires in the following month, there is no overissuance to the household in the following month and the household shall be entitled to the greater benefit amount. No claim shall be filed.

(b) If the adverse action time limit

will expire after the certification period ends, action shall be taken to terminate benefits; the certification period shall be allowed to expire. The caseworker shall document the change in the case record.

**(5) No change in food stamp benefit amount:** When a reported change has no effect on the food stamp benefit amount, the caseworker shall document the change in the case file and notify the household of the receipt of the report and that there is no change in food stamp benefits.

**D. Failure to report changes:**

**(1)** If the caseworker discovers that the household failed to report a change as required, the caseworker shall evaluate the change to determine whether the household received benefits to which it was not entitled. After verifying the change, the caseworker shall initiate a claim against the household for any month in which the household was overissued food stamp benefits. The first month of the overissuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change. If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced. No claim shall be established because of a change in circumstances that a household is not required to report in accordance with Paragraph 2 of Subsection B of 8.139.120.12 NMAC above.

**(2) Increased benefit amount:** When a household fails to make a timely report of a change which will result in an increased food stamp benefit amount, the household is not entitled to a supplement for any month prior to and including the month in which the change was reported. The household is entitled to an increased benefit amount effective no later than the first benefit amount issued 10 days after the date the change was reported.

**[F] E. Other changes:**

**(1) Eligibility standard:** When a household becomes entitled to a different eligibility standard, the caseworker shall apply the new standard whenever there is a change in household eligibility, benefit amount, or certification period, whichever occurs first.

**(2) Reconstituted household:** If members in the household separate into two or more households, the individuals who left the original household shall not be eligible for separate status in the month the change occurs. An adverse action notice is required whenever members leave the household. If the adverse action time limit expires in the month the change occurs, the individuals in the reconstituted household may be certified in the month following the month the change occurs. If the notice of

adverse action time limit expires in the month following the month the change occurred, the reconstituted household shall not be certified until the month following the month the notice time limit expires.

**(3) Shortened certification period:** Whenever a determination is made that a household's certification period must be shortened, the household is entitled to an expiration notice. A household shall be informed that its certification period shall end the month following the month the expiration notice is sent. The household shall be given an opportunity to timely reapply for benefits.

**(4) Unreported changes:** The caseworker shall act on all changes of which the caseworker becomes aware. At a minimum, this means documenting changes in the case record. All discrepancies and questionable information shall be resolved to make sure that the correct food stamp benefit amount is issued to the household. [05/15/97; 8.139.120.12 NMAC - Rn & A, 8.139.120.11 NMAC, 02/14/2002; 8.139.120.12 NMAC - Rn & A/E, 8.139.120.10 NMAC, 10/15/2008; A, 12/31/2008]

**8.139.120.13 REQUIREMENTS FOR MASS CHANGES:**

**A. Mass changes:** Certain changes initiated by the state or federal government may affect the entire caseload or significant portions of it.

**(1)** Mass changes include, but are not limited to, increases in excluded or deducted items or amounts.

**(2)** Mass changes affecting income include annual adjustments to social security, SSI, and other federal benefit programs, and any other changes in eligibility criteria based on legislative or regulatory actions.

**(3)** Information concerning mass change notice and hearing requirements are set forth in 8.100.180.15 NMAC.

**(4) Notice of mass changes:** Adverse action notices are not required for mass changes resulting from federal adjustments to eligibility standards, the maximum food stamp allotment, standard deduction, shelter deduction, and state adjustments to the mandatory utility standard. Announcement of anticipated mass changes may be made through the media, posters in ISD offices, and other likely places frequented by households, or through a general notice mailed to a participating household. When HSD makes a mass change in food stamp eligibility or benefit amount affecting the entire caseload or a part of it, affected households shall be mailed a notice of any change, reduction or termination of benefits. HSD shall issue a notice to affected households as far in advance of the household's next scheduled issuance date as

is reasonably possible, but by no later than the date the affected benefit is issued.

**B. Federal changes:** Authorized adjustments which may affect the food stamp benefit amount for participating households include the maximum food stamp allotment, standard deduction, excess shelter and dependent care deductions, and income eligibility standards. These changes go into effect for all households annually on October 1. Adjustments to federal standards are made prospectively.

**C. Cost of living adjustments:** Cost of living increases and any other mass changes in federal benefits, such as social security and SSI benefits, shall be treated as mass changes for food stamp purposes. The human services department is responsible for automatically adjusting a household's food stamp benefit amount to reflect such a change. Households shall not be responsible for reporting these changes.

**D. Mass changes in public assistance:** When overall adjustments to cash assistance payments are made, corresponding adjustments in food stamp benefits shall be handled as a mass change. Households shall be given advance notice of any adjustment in the food stamp benefit amount. If a household requests a fair hearing, benefits shall continue at the former amount only if the issue being appealed is that eligibility or food stamp benefit amount was determined incorrectly.

**E. Utility standard:** Authorized adjustments shall be effective for all October food stamp issuances. Households whose certification periods overlap annual adjustments in the state's mandatory utility allowance shall be informed at the time of certification that the adjustment shall be effective in October 1; the household shall be informed of the adjusted benefit amount, if known at the time of certification. Adjustments in the state's mandatory utility allowance are made prospectively.

[8.139.120.13 NMAC - Rn & A, 8.139.120.12 NMAC, 02/14/2002; 8.139.120.13 NMAC - N/E, 10/15/2008; A, 12/31/2008]

**8.139.120.14 OTHER CHANGES AFFECTING FOOD STAMP HOUSEHOLDS:**

**A. Failure to report changes:**

**(1)** If the caseworker discovers that the household failed to report a change as required, the caseworker shall evaluate the change to determine whether the household received benefits to which it was not entitled.

**(2)** After verifying the change, the caseworker shall initiate a claim against the household for any month in which the household was overissued food stamp bene-

fits. The first month of the overissuance is the month following the month the adverse action notice time limit would have expired had the household timely reported the change.

(3) If the discovery is made within the certification period, the household is entitled to a notice of adverse action if its benefits will be reduced.

(4) No claim shall be established because of a change in circumstances that a household is not required to report.

**B. Noncompliance with program requirements or fraud:**

**(1) Intentional failure to comply or fraud:** No household shall receive an increase in food stamp benefits when ~~its cash assistance payment is reduced~~ benefits from another program have been decreased (reduced, suspended or terminated) for intentional failure to comply with the ~~cash assistance program's~~ other program eligibility requirements or for an act of fraud. This provision applies in cases where the other program is a means-tested, federal, state or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds.

~~(2) A cash assistance program is defined a means tested federal, state, or local welfare or public assistance program, governed by welfare or public assistance laws or regulations, which distributes public funds.~~

~~(3) (2) [Such programs include, but are not limited to, supplemental security income (SSI), TANF (Title IV A), and federal or state general assistance (BIA, GA and GA).]~~ Failure to comply shall be determined as provided in Paragraph (3) of Subsection I of 8.139.520.9 NMAC.

**(4) (3) Verification of recoupment:** Agencies administering means-tested, publicly funded assistance programs provide recipients with written advance notice of proposed changes in benefit amounts. Such notices provide information which shall determine if the reduction in cash assistance is because of a properly reported change in circumstances. In most cases, the notice shall document whether the reduction is because of a recoupment of overpaid benefits resulting from intentional failure to report changes. If the notice is not detailed enough to make a determination, the agency which initiated recoupment shall be contacted to obtain the necessary information. Food stamp benefits shall not be delayed beyond normal processing standards pending the outcome of this determination.

**(5) (4) Calculating benefits:** When a recipient's assistance benefits are decreased to recoup an overpayment, that portion of the decrease that is the recoup-

ment shall first be identified. The recoupment is the amount of decrease attributed to the repayment of benefits overissued. If a Title IV-A recipient intentionally underreports income, the Title IV-A grant is first reduced to reflect the corrected income, then reduced further by the recoupment amount. In such a case, the food stamp calculation would reflect the Title IV-A amount reduced because of income, but not the second reduction caused by recoupment. [8.139.120.14 NMAC - N/E, 10/15/2008; A, 12/31/2008]

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

This is an amendment to 8.200.510 NMAC, Sections 11, 12 and 13, effective January 1, 2009.

**8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):** The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000,

the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

(P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

(Q) On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

(R) On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

(S) On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

(T) On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

(U) On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09]

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):** Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

[Continued on page 1328]

**DEDUCTION****AMOUNT**

- A. Personal needs allowance for institutionalized spouse \$60  
 B. Basic community spouse monthly income allowance standard \$1,750  
 (CSMIA)  
 (CSMIA standard minus income of community spouse = deduction  
 C. \* Excess shelter allowance for allowable expenses for community spouse [~~\$860~~] \$989  
 D. \*\* Extra maintenance allowance  
 E. Dependent family member 1/3 X (CSMIA - dependent member's income)  
 F. Non-covered medical expenses  
 G. \* The allowable shelter expenses of the community spouse must exceed \$525 per month for any deduction to apply.  
 H. \*\* To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.

I. **MAXIMUM TOTAL:** The maximum total of the community spouse monthly income allowance and excess shelter deduction is [~~\$2,610~~] \$2739.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08; A, 1-1-09]

**8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:** Costs of care are based on the date of application registration.

<u>DATE</u>	<u>AVERAGE COST PER MONTH</u>
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$ 2,377 per month
E. Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month
H. Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
I. Jan. 1, 1998 - Dec 31, 1998	\$3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
K. Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
L. Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
M. Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
N. Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
O. Jan. 1, 2004 - Dec. 31, 2004	\$3,899 per month
P. Jan. 1, 2005 - Dec. 31, 2005	\$4,277 per month
Q. Jan. 1, 2006 - Dec. 31, 2006	\$4,541 per month
R. Jan. 1, 2007 - Dec. 31, 2007	\$4,551 per month
S. Jan. 1, 2008 - Dec. 31, 2008	\$4,821 per month
T. Jan. 1, 2009	\$5,037 per month

Any fraction of a month remaining when this calculation is completed is dropped.

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09]

## NEW MEXICO HUMAN SERVICES DEPARTMENT

### MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16 and 20, which will be effective on January 1, 2009.

**8.200.520.12 COLA DISREGARD COMPUTATION**

<u>Current amt/cost of living</u>	<u>Benefit period</u>
[Current Title II amount =] [ <del>1.023</del> ]	[Benefit before 1/08]
<u>Current Title II amount =</u> <u>1.058</u>	<u>Benefit before 1/09</u>
<u>Benefit before 1/09 =</u> <u>1.023</u>	<u>Benefit before 1/08</u>
<u>Benefit before 1/08 =</u> <u>1.033</u>	<u>Benefit before 1/07</u>
<u>Benefit before 1/07 =</u> <u>1.041</u>	<u>Benefit before 1/06</u>



<u>Benefit before 1/06 =</u> 1.027	Benefit before 1/05
<u>Benefit before 1/05 =</u> 1.021	Benefit before 1/04
<u>Benefit before 1/04 =</u> 1.014	Benefit before 1/03
<u>Benefit before 1/03 =</u> 1.026	Benefit before 1/02
<u>Benefit before 1/02 =</u> 1.035	Benefit before 1/01
<u>Benefit before 1/01 =</u> 1.025	Benefit before 1/00
<u>Benefit before 1/00 =</u> 1.013	Benefit before 1/99
<u>Benefit before 1/99 =</u> 1.021	Benefit before 1/98
<u>Benefit before 1/98 =</u> 1.029	Benefit before 1/97
<u>Benefit before 1/97 =</u> 1.026	Benefit before 1/96
<u>Benefit before 1/96 =</u> 1.028	Benefit before 1/95
<u>Benefit before 1/95 =</u> 1.026	Benefit before 1/94
<u>Benefit before 1/94 =</u> 1.030	Benefit before 1/93
<u>Benefit before 1/93 =</u> 1.037	Benefit before 1/92
<u>Benefit before 1/92 =</u> 1.054	Benefit before 1/91
<u>Benefit before 1/91 =</u> 1.047	Benefit before 1/90
<u>Benefit before 1/90 =</u> 1.040	Benefit before 1/89
<u>Benefit before 1/89 =</u> 1.042	Benefit before 1/88
<u>Benefit before 1/88 =</u> 1.013	Benefit before 1/87
<u>Benefit before 1/87 =</u> 1.031	Benefit before 1/86
<u>Benefit before 1/86 =</u> 1.035	Benefit before 1/85
<u>Benefit before 1/85 =</u> 1.035	Benefit before 1/84
<u>Benefit before 1/84 =</u> 1.074	Benefit before 7/82
<u>Benefit before 7/82 =</u> 1.112	Benefit before 7/81
<u>Benefit before 7/81 =</u> 1.143	Benefit before 7/80
<u>Benefit before 7/80 =</u> 1.099	Benefit before 7/79
<u>Benefit before 7/79 =</u> 1.065	Benefit before 7/78
<u>Benefit before 7/78 =</u> 1.059	Benefit before 7/77

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09]

8.200.520.13 YEAR	FEDERAL BENEFIT RATES						
	Individual		Inst.	Indiv.	Couple	Inst.	Couple
	FBR	FBR	VTR	FBR	FBR	VTR	
1/89 to 1/90	\$368	\$30		\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30		\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30		\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30		\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30		\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30		\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30		\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30		\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30		\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30		\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30		\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30		\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30		\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30		\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30		\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30		\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30		\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30		\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30		\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30		\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30		\$224.66	\$1,011	\$60	\$337

Ineligible child deeming allocation: \$319.00

Part B premium is \$96.40 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

[Effective January 1, 1989, the SSI resource standard was increased to \$2,000 for an individual and \$3,000 for a couple. These amounts did not change in 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, or 2008.] The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09]

**8.200.520.15 SSI LIVING ARRANGEMENTS**  
**A. Individual living in his/her own household who own or rent**

Payment amount: [~~\$637~~] \$674 Individual  
 [~~\$956~~] \$1,011 Couple

**B. Individual receiving support and maintenance payments:** For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$637 - \$212.33 = \$424.67~~] \$674 - \$224.66 = \$449.34 Individual  
 [~~\$956 - \$318.66 = \$637.34~~] \$1,011 - \$337.00 = \$674.00 Couple

**C. Individual or couple living household of another:** For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$637 - \$212.33 = \$424.67~~] \$674 - \$224.66 = \$449.34 Individual  
 [~~\$956 - \$318.66 = \$637.34~~] \$1,011 - \$337.00 = \$674.00 Couple

**D. Child living in home with his/her parent(s)**

Payment amount: [~~\$637~~] \$674

**E. Individual in institution**

Payment amount: \$30.00

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09]

**8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES:** Effective January 1, [~~2008~~] 2009, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is [~~\$1,894~~] \$2,022.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09]

**8.200.520.20 COVERED QUARTER INCOME STANDARD:**  
**DATE CALENDAR QUARTER AMOUNT**

Jan. 2009 - Dec. 2009	\$1,090 per calendar quarter
Jan. 2008 - Dec. 2008	\$1,050 per calendar quarter
Jan. 2007 - Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 - Dec. 2006	\$970 per calendar quarter

Jan. 2005 - Dec. 2005	\$920 per calendar quarter
Jan. 2004 - Dec. 2004	\$900 per calendar quarter
Jan. 2003 - Dec. 2003	\$890 per calendar quarter
Jan. 2002 - Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09]

## NEW MEXICO HUMAN SERVICES DEPARTMENT

### MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.11 NMAC, Sections 1, 3, 6, 8 through 17, effective January 1, 2009.

**8.310.11.1 ISSUING AGENCY:** New Mexico Human Services Department (HSD).

[8.310.11.1 NMAC - Rp, 8 NMAC 4.MAD.000.1, 7/1/04; A, 1/1/09]

**8.310.11.3 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] as amended, or state statute. See NMSA 1978 Section 27-2-12 et seq.

[8.310.11.3 NMAC - Rp, 8 NMAC 4.MAD.000.3, 7/1/04; A, 1/1/09]

**8.310.11.6 OBJECTIVE:** The objective of these [regulations] rules is to provide [policies] instruction 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.

[8.310.11.6 NMAC - Rp, 8 NMAC 4.MAD.000.6, 7/1/04; A, 1/1/09]

**8.310.11.8 MISSION STATEMENT:** The mission of the New Mexico medical assistance division (MAD) of HSD 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.

[8.310.11.8 NMAC - Rp, 8 NMAC 4.MAD.002, 7/1/04; A, 1/1/09]

**8.310.11.9 PODIATRY SERVICES:** The New Mexico [medicare program (medicare)] MAD pays for medically necessary health services furnished to eligible recipients. To help New Mexico eligible recipients receive necessary services, MAD pays for covered services [furnished by podiatrists]. This part describes eligible

~~podiatric providers, types of services furnished by podiatrists that are covered by medicare and general reimbursement methodology].~~

[8.310.11.9 NMAC - Rp, 8 NMAC 4.MAD.718.2, 7/1/04; A, 1/1/09]

### 8.310.11.10 ELIGIBLE PROVIDERS:

~~[A. Upon MAD's approval of New Mexico medical assistance program provider participation applications licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to medicare recipients. Providers must be enrolled as medicare providers before submitting a claim for payment to MAD claims processing contractor.~~

~~B. Once enrolled, providers receive and are responsible for maintenance of, a packet of information which includes medicare program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. To be eligible for medicare reimbursement, providers are bound by MAD policies, procedures, billing instructions, reimbursement rates, and all audit, recoupment and withhold provisions unless superseded by federal law, federal regulation or the specific written approval of the MAD director.]~~

A. Upon approval of a New Mexico medical assistance division provider participation agreement by MAD or its designee, licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD processing contractors. 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, billing instructions, utilization review instructions, and other pertinent materials. Once enrolled, providers receive instruction 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 policy 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.

[C.] B. The "practice of podiatry" is defined as engaging in that primary health care profession, the members of which examine, diagnose, treat, and prevent by medical, surgical and mechanical means ailments affecting the human foot and ankle and the structures governing their functions, but does not include amputation of the foot or the personal administration of a general anesthetic. See NMSA 1978 Section 61-8-2 (Repl. Pamp. 1991). [8.310.11.10 NMAC - Rp, 8 NMAC 4.MAD.718.21, 7/1/04; A, 1/1/09]

### 8.310.11.11 PROVIDER RESPONSIBILITIES AND REQUIREMENTS:

A. Providers who furnish services to medicare eligible 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, 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.] as specified in the MAD provider participation agreement. A provider also agrees to conform to MAD program rules and instructions as specified in this manual and 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 up-coding services.

[A. **Recipient eligibility determination:** Providers must verify that services they furnish are provided to eligible recipients.

(1) Providers may verify eligibility through several mechanisms, including the use of an automated voice response system, contacting the medicare fiscal agent contractor eligibility help desk, contracting with a medicare eligibility verification system (MEVS) vendor, or contracting with a medicare magnetic swipe card vendor. Providers must verify that recipients are eli-

~~gible and remain eligible for medicaid throughout periods of continued or extended services. By verifying client eligibility, a provider is informed of restrictions that may apply to a recipient's eligibility.~~

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

~~**B. Requirements for updating information:** Providers must furnish MAD or the MAD claims processing contractor with complete information on changes in their address, license, certification, board specialties, corporate name or corporate ownership, and a statement as to the continuing liability of the provider for any recoverable obligation to MAD which occurred or may have occurred prior to any sale, merger, consolidation, dissolution or other disposition of the health care provider or person. MAD or the MAD claims processing contractor must receive this information at least 60 days before the change. Any payment made by MAD based upon erroneous or outdated information is subject to recoupment.]~~

~~**[C].B. Documentation requirements:** Providers must maintain records to fully disclose the nature, quality, amount, and medical necessity of services furnished to eligible recipients who are currently receiving or who have received medical services in the past [42 CFR 431.107(b)]. Documentation supporting medical necessity must be legible and available to [medicaid] MAD or its designee upon request.~~

~~(1) For foot care services covered [by virtue] due to the presence of systemic disease, documentation of the clinical condition of the feet should contain sufficient detail to provide evidence that non-professional performance of the service would have been hazardous for the eligible recipient. The eligible recipient's records must include the following:~~

~~(a) a clinical description of the feet; simply listing class findings is insufficient;~~

~~(b) description of co-morbid conditions such as infections or abscesses; and~~

~~(c) documentation of appropriate attempts to alleviate conditions that contribute to foot problems.~~

~~(2) To the extent that management of an underlying systemic disease impacts the need for [and/or] or expected outcome of management of the feet, the status of the systemic disease should be recorded. Documentation is to be repeated in the record as often as necessary to accurately portray the eligible recipient's current condition at the time of billed services.~~

(3) For eligible recipients whose foot care is covered due to the presence of a systemic condition that requires active treatment, documentation by the treating physician is to include corroboration of the systemic condition diagnosis and active treatment of the systemic disease.

(4) Documentation of foot care services to [residents of a nursing homes] an eligible recipient in a nursing home must include a current nursing facility order (dated and signed with date of signature) for routine foot care service, issued by the [patient's] eligible recipient's supervising physician, that describes the specific service necessary. Such orders must meet the following requirements.

(a) The order must be dated and must have been issued by the supervising physician prior to foot care services being rendered.

(b) Telephone or verbal orders not written personally by the supervising physician must be authenticated by the dated physician's signature within 30 calendar days following the issuance of the order.

(c) The order must be consistent with the attending physician's plan of care; the order must be for medically necessary services to address a specific [patient] eligible recipient's complaint or physical finding.

(d) Routinely issued or "standing" facility orders for routine foot care service and orders for non-specific podiatric services that do not meet the above requirements are insufficient.

(e) Documentation of foot care services to [residents of nursing homes] an eligible recipient in a nursing home performed solely at the request of the [patient or patient's family/conservator] eligible recipient or their personal representative must include the identity of the person who requested the services and that person's relationship to the [patient] eligible recipient.

(5) The [patient's] eligible recipient's record must include the location of each lesion treated and specific mention (by number or name) and description of each nail treated.

(6) For foot care services for [recipients] an eligible recipient with diabetic sensory neuropathy and loss of protective sensation (LOPS), the [patient] eligible recipient's history should include, but is not limited to, how, when and by whom the diagnosis of LOPS was made, as well as any pertinent present [and/or] or past history regarding the feet.

(7) The eligible recipient's history should include, at the least, an interval history regarding the feet since the previous evaluation for follow-up physician evaluation and management of [a patient] an eligible recipient with diabetic sensory neuropathy

resulting in a LOPS.

(8) For coverage of mycotic nail debridement by reason of the presence of specified conditions, that is, in the absence of a qualifying systemic condition, the medical record [should] must document the following:

(a) [patient's] eligible recipient's description of the pain including such things as severity, duration, contextual information, modifying factors, specification regarding which nail(s) is painful, etc.;

(b) description of [patient's] eligible recipient's functional limitation due to the nail(s);

(c) description of any secondary infections; and

(d) description of other modalities of treatment to which debridement or other surgical procedure is adjunctive (in the event that pharmacologic therapy is contraindicated or otherwise not indicated, the nature of the contraindication should be described).

(9) Debridement must be distinguished from trimming or clipping and records supporting each billed debridement should indicate what portion of the nail was not attached to the nail bed and what portion of the nail was removed.

(10) Services not substantiated in the eligible recipient's records are subject to recoupment. See 8.351.2 NMAC, *Sanctions and Remedies*.

[8.310.11.11 NMAC - Rp, 8 NMAC 4.MAD.718.22, 7/1/04; A, 1/1/09]

**8.310.11.12 COVERED SERVICES:** [Medicaid] MAD covers only medically necessary podiatric services furnished by providers, as required by the condition of the eligible recipient. All services must be furnished within the scope and practice of the podiatrist as defined by state law, the New Mexico board of podiatry licensing requirements, and in accordance with applicable federal, state, and local laws and regulations. [Medicaid] MAD covers the following specific podiatry services.

A. Routine foot care when there is evidence of a systemic condition, circulatory distress or areas of diminished sensation in the feet demonstrated through physical or clinical determination and if the severity meets the class findings (as in Subparagraphs (a) through (c) of Paragraph (2) of Subsection A of 8.310.11.12 NMAC). [Patients] An eligible recipient with diagnoses marked by an asterisk(\*) in the list below must be under the active care of an M.D. or D.O. to qualify for covered routine foot care, and must have been assessed by that provider for the specified condition within six months prior to or 60 calendar days after the routine foot care service. Nurse practitioners, physician assistants and clinical nurse specialists do not satisfy the

coverage condition of "active care by a physician".

(1) The following list of systemic diseases is not all-inclusive and represents the most commonly billed diagnoses which qualify for medically necessary foot care:

- (a) diabetes mellitus\*;
- (b) arteriosclerosis obliterans;
- (c) buerger's disease;
- (d) chronic thrombophlebitis\*;
- (e) neuropathies involving the feet associated with:
  - (i) malnutrition and vitamin deficiency\*;
  - (ii) malnutrition (general, pellagra);
  - (iii) alcoholism;
  - (iv) malabsorption (celiac disease, tropical sprue);
  - (v) pernicious anemia;
  - (vi) carcinoma\*;
  - (vii) diabetes mellitus\*;
  - (viii) drugs or toxins\*;
  - (ix) multiple sclerosis\*;
  - (x) uremia (chronic renal disease)\*;
  - (xi) traumatic injury;
  - (xii) leprosy or neurosyphilis;
  - (xiii) hereditary disorders;
  - (xiv) hereditary sensory radicular neuropathy;
  - (x) fabry's disease; and
  - (xvi) amyloid neuropathy.

(2) Routine foot care services can be covered for [patients who have] an eligible recipient who has a systemic condition that can be covered (as in Subparagraphs (a) through (e) of Paragraph (1) of Subsection A of 8.310.11.12 NMAC) and if the severity meets the class findings as follows: one of class A findings; or two of class B findings; or one of the class B findings and two of the following class C findings:

- (a) **Class A findings:** non-traumatic amputation of foot or integral skeletal portion thereof.
- (b) **Class B findings:**
  - (i) absent posterior tibial pulse;
  - (ii) absent dorsalis pedis pulse; and
  - (iii) advanced trophic changes as evidenced by any three of the following: hair growth (decrease or increase); nail changes (thickening); pigmentary changes (discoloring); skin texture (thin, shiny); and/or or skin color (rubor or redness).
- (c) **Class C findings:**
  - (i) claudication;
  - (ii) temperature changes (e.g., cold feet);

- (iii) edema;
- (iv) paresthasias (abnormal spontaneous sensations in the feet); and/or or
- (v) burning.

B. [Surgical] Non-surgical and surgical correction of a subluxated foot structure that is an integral part of the treatment of foot pathology or that is undertaken to improve the function of the foot or to alleviate an associated symptomatic condition, including treatment of bunions, is covered when [a recipient meets the systemic conditions and class findings as required for routine foot care. See Subparagraphs (a) through (e) of Paragraph (2) of Subsection A of 8.310.11.12 NMAC] medical necessity has been documented. Treatment for bunions is limited to capsular and/or or bony surgery. The treatment of subluxation of the foot is defined as partial [dislocation] dislocations or displacements of joint surfaces, tendons, ligaments or muscles in the foot.

C. Treatment of warts on the feet.

D. Treatment of asymptomatic mycotic nails may be covered in the presence of a systemic condition that meets the clinical findings and class findings as required for routine foot care. See Subparagraphs (a) through (c) of Paragraph (2) of Subsection A of 8.310.11.12 NMAC.

E. Treatment of mycotic nails is covered in the absence of a covered systemic condition if there is clinical evidence of mycosis of the toenail and one or more of the following conditions exist and results from the thickening and dystrophy of the infected nail plate:

- (1) marked, significant limitation;
- (2) pain; and/or or
- (3) secondary infection.

F. Orthopedic shoes and other supportive devices only when the shoe is an integral part of a leg brace or therapeutic shoes furnished to diabetics.

G. If the eligible recipient has existing medical condition(s) that would predispose the eligible recipient to complications even with minor procedures, hospitalization for the performance of certain outpatient podiatric services may be covered. All claims related to hospitalization for podiatric procedures are subject to pre-payment or post-payment review. [8.310.11.12 NMAC - Rp, 8 NMAC 4.MAD.718.23, 7/1/04; A, 1/1/09]

**8.310.11.13 INJECTABLE DRUG SERVICES:** [Medicaid] MAD covers injectable medications administered by physicians or other healthcare providers furnishing services to [eligible medical recipients] an eligible recipient within their scope of practice.

[8.310.11.13 NMAC - N, 7/1/04; A, 1/1/09]

**8.310.11.14 LABORATORY AND DIAGNOSTIC IMAGING SERVICES:** [Medicaid] MAD covers medically necessary laboratory and diagnostic imaging services ordered by practitioners and when furnished by [medicaid providers to eligible medicaid recipients] eligible providers to an eligible recipient. See 42 CFR Section 440.30.

A. **Laboratory services:** Podiatrists can bill for medically necessary laboratory services ordered by podiatrists which are either [performed] performed by podiatrists or under their supervision. See 8.324.2 NMAC, *Laboratory Services.*

(1) Professional components associated with clinical laboratory services are payable only when the work is actually performed by pathologists who are not billing for global procedures and the work is for anatomic and surgical pathology only, including cytopathology, histopathology and bone marrow biopsies.

(2) Specimen collection fees are payable when obtained by venipuncture, arterial stick, or urethral catheterization, unless eligible recipients are inpatients of nursing facilities or hospitals.

B. **Diagnostic imaging services:** Podiatrists can bill for medically necessary diagnostic imaging or radiology services which are either performed by podiatrists or under their supervision. See 8.324.3 NMAC, *Diagnostic Imaging and Therapeutic Radiology Services* [MAD-752].

(1) The complete procedure includes the technical radiology component and the professional component.

(2) [Medicaid] MAD covers one [(+)] professional component per imaging procedure.

(3) Reimbursement for imaging procedures includes all materials and minor services necessary to perform the procedure. [Medicaid] MAD does not pay for kits, films, or supplies, as separate charges. [8.310.11.14 NMAC - Rp, 8 NMAC 4.MAD.718.26, 7/1/04; A, 1/1/09]

**8.310.11.15 NON COVERED SERVICES:** Podiatric services are subject to the limitations and coverage restrictions which exist for other [medicaid] MAD services. See 8.301.3 NMAC, *General Noncovered Services* [MAD-602]. [Medicaid] MAD does not cover the following specific services or procedures.

A. Routine foot care is not covered except as indicated under "covered services" for [recipients] an eligible recipient with systemic conditions meeting specified class findings. Routine foot care is defined as:

(1) trimming, cutting, clipping and debriding toenails;

(2) cutting or removal of corns, calluses, ~~and/or~~ or hyperkeratosis;

(3) other hygienic and preventative maintenance care such as cleaning and soaking of the feet, application of topical medications, and the use of skin creams to maintain skin tone in either ambulatory or bedfast patients; and

(4) any other service performed in the absence of localized illness, injury or symptoms involving the foot.

B. Services directed toward the care or correction of a flat foot condition. "Flat foot" is defined as a condition in which one or more arches of the foot have flattened out.

C. Orthopedic shoes and other supportive devices for the feet are generally not covered. This exclusion does not apply if the shoe is an integral part of a leg brace or therapeutic shoes furnished to diabetics.

D. Surgical or nonsurgical treatments undertaken *for the sole purpose* of correcting a subluxated structure in the foot as an isolated condition are not covered. Subluxations of the foot are defined as partial dislocations or displacements of joint surfaces, tendons, ligaments, or muscles of the foot.

E. ~~[Medicaid]~~ MAD will not reimburse for services that have been denied by medicare for coverage limitations.

[8.310.11.15 NMAC - Rp, 8 NMAC 4.MAD.718.27, 7/1/04; A, 1/1/09]

### 8.310.11.16 PRIOR AUTHORIZATION AND UTILIZATION REVIEW:

All ~~[medicaid]~~ MAD services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished, before payment is made or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. ~~[Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.]~~ Once enrolled, the provider receives instructions on how to access provider program rules, billing instructions, utilization review instructions, and other pertinent material and to obtain answers to questions on or not covered by these materials. 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.

A. Certain procedures or services can require prior authorization from MAD or its designee. Services for which prior authorization was obtained

remain subject to utilization review at any point in the payment process.

B. Prior authorization of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible ~~[for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.]~~ for a specific program at the time services are furnished and must determine if the eligible recipient has other health insurance.

C. Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[8.310.11.16 NMAC - Rp, 8 NMAC 4.MAD.718.28, 7/1/04; A, 1/1/09]

### 8.310.11.17 REIMBURSEMENT:

A. Podiatrists must submit claims for reimbursement on the ~~[HCFA-1500]~~ CMS-1500 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing.

B. Reimbursement to providers is made at the lesser of the following:

(1) the provider's billed charge; or  
(2) the MAD fee schedule for the specific service or procedure.

(a) The provider's billed charge must be the provider's usual and customary charge for services.

(b) "Usual and customary charge" refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service.

[8.310.11.17 NMAC - Rp, 8 NMAC 4.MAD.718.29, 7/1/04; A, 1/1/09]

## NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.5 NMAC, Sections 2, 3, 7, 8, 10, 11, 14, 16 and 17, effective December 31, 2008.

**1.13.5.2 SCOPE:** Eligible applicants include state, county, municipal, and ~~[Native American government repositories, non-profit organizations, and qualified individuals]~~ tribal government offices, political subdivisions, and non-profit organizations. See 1.13.5.8 NMAC.

[1.13.5.2 NMAC - N, 11/30/00; A, 06/30/04; A, 12/31/08]

**1.13.5.3 S T A T U T O R Y**

**AUTHORITY:** ~~[Public Records Act 14-3-6 NMSA 1978 and 44 U.S.C.25, 36 CFR 1206.]~~ Section 14-3-6 NMSA 1978 authorizes the state records administrator to adopt regulations; 44 U.S.C. 25, 36 CFR 1206.

[1.13.5.3 NMAC - N, 11/30/00; A, 06/30/05; A, 12/31/08]

### 1.13.5.7 DEFINITIONS:

A. "Access" means the availability of archives, records or manuscripts in terms of physical condition, legal permission, and intellectual entry.

B. "Accession" means a term used as both a noun and a verb for the act and procedures involved in a transfer of legal title and the taking of records or papers into the physical custody of an archival agency, records center or manuscript repository and the materials involved in such a transfer.

C. "Archives" means the non-current records of an organization or institution preserved because of their continuing value in meeting the needs of the creating organization.

D. "Archivist" means an employee whose duty is to maintain the non-current records of an organization or agency in order to serve its needs. Evidence of advanced study in an applicable academic area is usually required.

E. "Arrangement of collections" means the process and results of organizing records or manuscripts, particularly by function or activity of their creator.

F. "Collection policy" means a statement adopted by an archival agency, records center or manuscript repository to guide its accessioning and de-accessioning decisions in order to carry out its formal mission.

G. "Cubic feet" means a standard measure of the quantity of archival material; the term refers to the amount of space usually occupied by one standard records storage box (12 in. x 12 in. x 16 in.) on standard archival shelving. By conversion, 36 inches of letter-size papers, arranged lineally (three linear feet), would occupy approximately two cubic feet, if placed in storage boxes.

H. "Curator" means an employee whose duty is to foster research by making accessible order of a repository's collections. Evidence of advanced study in an applicable academic area is usually required.

I. "De-accession" means the act, or the materials involved in the act, of a transfer out of the custody of an archives and is the opposite of accession.

J. "Documentary edition" means a published edition of documents derived directly from original records and often accompanied by editorial commentary and annotations.

**K. "Essential minimum"** means, in the interests of efficiency and economy, the most succinct statements and the most definitive examples that meet the application requirements, thus keeping the proposal package simple, focused and relevant. For example, resumes, which provide the essential minimum, are more impressive by their relevance than by their length.

**L. "Evaluation"** means a mechanism by which the effectiveness of the project can be measured by describing the extent to which a project's goals have been met. Narrative, graphic or statistical methods can be used to assess the product or to analyze the process. Participant or user assessments are also helpful in some cases.

**M. "Finding aid"** means a descriptive device created by an archives, records center or repository to establish the size, condition, content or arrangement of a collection or record group.

~~**N. "Fiscal agent"** means the financial representative of a corporation or service organization, or the officer authorized to make financial transactions.~~

~~**O. "Mission statement"** means a formal, written statement of an organization's or agency's purpose or vision. Non-profit organizations normally provide a mission statement when registering with the New Mexico public regulation commission.~~

**[P.] N. "Non-profit organization"** means any organization, which by its articles of association and by-laws prohibits acts of private inurement, that is, transferring of the organization's earnings to persons in their private capacity; non-profit organizations are required to use their earnings for their program activities and these earnings are tax-exempt if the organization has met the approval of the internal revenue service as falling within a category such as 501(c) (3).

**[Q.] Q. "Original records"** means archives or public records as created by a governmental or quasi-governmental body, and manuscripts such as letters, diaries, photographs or other first-hand reports.

**P. "Political subdivisions"** means any county; incorporated city; town or village; drainage, conservancy, irrigation, water and sanitation or other district; mutual domestic association; public water cooperative association; community ditch association; or community land grant organizations and governed pursuant to Chapter 49, Article 1 NMSA 1978.

**[R.] Q. "Preservation"** means the provision of adequate facilities for the protection, care and maintenance of archives, records, and manuscripts, particularly to promote their future availability.

**[S.] R. "Provenance"** means

the source or the office of origin of the records and thus the principle of maintaining the integrity of the records' identity by their creator and, also, respect for their original order.

~~**[T.] "Qualified individuals"** means an archivist, curator, librarian or records manager.]~~

**[U.] S. "Records manager"** means an employee whose duty is to manage the creation, use and disposition of an organization or agency's records. Evidence of advanced study in an applicable academic area is usually required.

**[V.] T. "Statement of need"** means a logical and succinct presentation of the argument for the necessity of a project; it should be factual, reasonable and persuasive.

**[W.] U. "Underserved community"** means populations in which individuals lack access to programs due to geography, economics, ethnicity, disability, or age.

[1.13.5.7 NMAC - N, 11/30/00; A, 06/30/04; A, 06/30/05; A, 12/31/08]

#### 1.13.5.8 ELIGIBILITY:

**A.** To be eligible for an historical records grant, the applicant shall be one of the entities listed below.

**(1)** A governmental organization including:

**(a)** state agencies as prescribed in the Public Records Act; except the state records center and archives;

**(b)** public schools;

**(c)** district courts;

**(d)** public colleges and universities and all associated programs;

**(e)** county offices;

**(f)** municipal offices;

**(g)** ~~[quasi-governmental organizations] political subdivisions; or~~

**(h)** ~~[Native American government organizations] tribal government offices.~~

**(2)** A non-profit organization, verified as such by:

**(a)** a copy of its tax-exempt or 501(c)(3), or equivalent, status and

**(b)** evidence that it has made provisions for the transfer of its holdings to a like organization or an appropriate repository upon dissolution[;]

~~**(3)** A qualified individual including:~~

~~**(a)** an individual affiliated with or consulting with an eligible entity or~~

~~**(b)** an individual registered with the state as a business whose work will result in documentary editions or will benefit historical records repositories generally, and whose credentials meet the standards set by the NMHRAB].~~

**B.** Previous grant recipients shall be in compliance with the stipula-

tions of all previous awards in order to continue to be eligible.

[1.13.5.8 NMAC - N, 11/30/00; A, 09/30/02; A, 07/15/03; A, 06/30/04; A, 12/31/08]

**1.13.5.10 FUNDING PRIORITIES:** Grant funds shall be ranked according to funding priorities adopted by the NMHRAB.

~~**[A.] Training programs or opportunities for historical records custodians to develop basic management tools for the care and preservation of records in their custody.**~~

~~**B.] Assessment or survey of records that are in public and private repositories that results in developing or enhancing a repository's records or archival management program.**~~

~~**C.] Development of tribal records management and archival programs.**~~

~~**D.] Identification and mitigation of at risk historical records in public and private repositories (activities may include preservation and conservation processes needed to stabilize the media on which records are captured in accordance with an approved conservation plan).**~~

~~**E.] Preservation activities that include but are not limited to reformatting (microfilm, copying to permanent media, etc) and re-housing.**~~

~~**F.] Projects that facilitate access to New Mexico's historical records through activities that include but are not limited to cataloging, creating finding aids, digitizing (shall include an appropriate index) and organizing collections.**~~

~~**G.] Documentary research based on original records that results in publication or dissemination.**~~

~~**H.] Programs that promote New Mexico's history through its historical records with activities that include exhibits, conferences, papers and documentaries.**~~

~~**I.] Previously unfunded applicants and applicants from small or underserved communities.]**~~

**A.** The three highest priorities of the NMHRAB are:

**(1)** preservation;

**(2)** access; and

**(3)** regional or statewide training.

**B.** The secondary priorities of the NMHRAB are:

**(1)** documentary research; and

**(2)** programs that promote New Mexico history, such as exhibits, conferences, papers and documentaries;

**(3)** development of records and archival management programs.

[1.13.5.10 NMAC - N, 11/30/00; 07/15/03; A, 06/30/04; A, 06/30/05; A, 12/31/08]

### 1.13.5.11 TYPES OF PROJECTS FUNDED:

~~[A.]~~ Projects shall directly address the funding priorities published in the NMHRAB strategic plan. Funding priorities are published in order of importance. Funding priorities are published in order of importance. Following are examples of projects that could be funded.

~~[(1) Consultants that effect an improvement in the preservation of, management of or access to historical records, through assessment resulting in a strategic plan for the repository, by providing training in archival methods and techniques or records management principles and techniques, or by establishing an archival or records management program. Consultants shall be competent in the area in which they plan to consult as demonstrated by their credentials or training.]~~

~~[(4) A.]~~ **Preservation** projects that mitigate unstable or deteriorating conditions of historical records through the identification, organization and description, conservation treatment or reformatting of the records - for example, copying to another medium, such as microform.

~~[(5) B.]~~ **Access** projects that promote the availability of historical records by developing finding aids. Examples include: indexing significant collections; creating electronic catalog records or distributing collection guides; providing on-line access to finding aids; digitizing historical records; and placing copies in other repositories that have agreed to accept them.

~~[(3) C.]~~ **[Model] Regional or statewide training** programs that focus on developing ~~[tools and strategies]~~ best practices that can be used to train staff in more than one repository or in a repository experiencing high-turnover.

~~[(6) D.]~~ **Research** projects that provide original scholarly exposition or interpretation of documentary evidence of New Mexico history based on original records, and documentary edition projects that publish original records for general usage. Since these projects are a lower funding priority, proposals shall be very well developed if funding is to be obtained.

~~[(2) E.]~~ **Program development** projects that establish or elevate standards of archival or records management practice in the applicant repository.

~~[B.]~~ Projects proposing collaborative efforts to address specific record keeping or preservation issues will be given additional consideration.

[1.13.5.11 NMAC - N, 11/30/00; A, 09/30/02; A, 06/30/04; A, 12/31/08]

### 1.13.5.14 APPLICATION FOR HISTORICAL RECORDS GRANTS:

A. An applicant shall

answer all questions on the application form. An applicant may submit pertinent attachments to support its application, but the number of pages shall be limited to the essential minimum. An applicant shall submit one completed application with original signatures and supporting documents, and eight copies. Incomplete applications shall not be considered.

B. The following information shall be included in the application.

(1) Applicant information - legal name, address, contact name, phone number and e-mail address.

(2) Signature by an individual authorized to obligate the applicant.

~~[(3) Fiscal agent's name, title and address.]~~

~~[(4) (3)]~~ Project title, period and amount of both the grant request and the proposed match.

~~[(5) (4)]~~ Applicant's status:

~~[(a)]~~ An organization shall be an eligible entity as defined in Subsection A of 1.13.5.8 NMAC.

~~[(b) An individual shall be legally affiliated with the qualifying organization or repository and professionally engaged in work applicable to the historical records community; or registered as a business within the state of New Mexico whose work will result in documentary editions or will benefit historical records repositories generally, and whose credentials meet the standards set by the NMHRAB.]~~

~~[(6) A copy of the organization's formally adopted statement of mission or purpose.]~~

~~[(7) A copy of the organization's collection management policy (unless establishing one is the objective of the proposal).]~~

~~[(8) (5)]~~ A summary statement that briefly summarizes the nature and purpose of the project proposed for funding no more than one-quarter page in length.

~~[(9) (6)]~~ A project description narrative limited to three pages in length. The narrative shall discuss content and significance of the historical records to be affected by this project, the scope of the work to be performed, key personnel and the work plan for the project.

~~[(10) (7)]~~ The budget for the project submitted on the form prescribed by the NMHRAB.

C. Application deadline: Completed applications (original and eight copies) shall be received by the deadline set forth in the call for proposals.

D. **Rejection**: Applications that do not comply with these criteria shall be rejected.

[1.13.5.14 NMAC - N, 11/30/00; A, 09/30/02; A, 07/15/03; A, 06/30/04; A, 06/30/05; A, 12/31/08]

### 1.13.5.16 REVIEW PROCESS: Historical records grant applications

shall be subjected to a three-stage review process.

A. First, all applications shall be screened for eligibility and compliance with the guidelines. Organizations that have submitted ineligible and non-compliant applications shall be notified by the NMHRAB administrative office.

B. Second, all applications shall be reviewed for technical merit on an established rating system by New Mexico state records center and archives professional staff, and recommendations for further consideration made. At this level applicants shall be advised of points that may need clarification or elaboration in order to enhance a proposal's viability.

C. Third, recommended proposals shall be evaluated by the NMHRAB and ranked according to published priorities ~~[at the regular fall meeting]~~. [1.13.5.16 NMAC - N, 11/30/00; Rn to 1.13.5.17 NMAC, 09/30/02. 1.13.5.15 Rn to 1.13.5.16 & A, 09/30/02; A, 07/15/03; A, 06/30/04; A, 12/31/08]

1.13.5.17 **POST-AWARD REQUIREMENTS**: Successful historical record grant applicants shall comply with the following post award requirements.

A. Submit progress reports by end of seventh month for work completed in the first six months of the grant period. Progress reported shall be substantially in line with the project timeline included in the grant application. Any appreciable deviation from the timeline shall be justified in the progress report.

(1) If work has not been initiated by the due date of the progress report, the entire grant award shall be nullified.

(2) If progress reported lags substantially behind that described in the project timeline, the grant administrator shall review the project, consult with the grantee to determine whether timely completion of the project is feasible and make a recommendation to the chair of the NMHRAB on continuation of the project. Based on the recommendation, the chair reserves the right to terminate the grant or require an amended scope of work and reduced award.

(3) Failure to submit the progress report by the established deadline shall result in suspension of further reimbursements or payments until the report is submitted and accepted. If the report is not submitted within 30 days of the due date of the progress report, no further requests for reimbursements or payments shall be honored and any balance remaining in the grant award shall revert to the state records center and archives.

B. Submit final reports within 30 days of project completion or no



later than June 15 of the fiscal year for which the grant award is made, whichever is earlier.

**C.** Request funds for reimbursement or payment based on amount of work completed.

**D.** Submit proof of completion of training before project start date, if required.

**E.** Adhere to the state procurement code for purchase of goods and services.

**F.** Maintain grant records for at least two years after completion of the project.

~~**G.** Submit an article to the NMHRAB office for possible publication on agency's website.~~

~~**H.**~~ **G.** Complete the project within the grant period specified in the grant award. No extensions of the grant period shall be made.

[1.13.5.16 NMAC Rn to 1.13.5.17 NMAC & A, 09/30/02; A, 06/30/04; A, 06/30/05; A, 06/01/06; A, 06/29/07; A, 12/31/08]

## NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

### TITLE 13 INSURANCE CHAPTER 9 LIFE INSURANCE AND ANNUITIES PART 19 PREFERRED RISK MORTALITY TABLES FOR PRENEED INSURANCE

**13.9.19.1 ISSUING AGENCY:**  
New Mexico Public Regulation  
Commission Insurance Division.  
[13.9.19.1 NMAC - N, 1/1/2009]

**13.9.19.2 SCOPE:** This rule applies to "funeral plans," as defined in Section 59A-49-4 NMSA 1978, to "preneed funeral contracts or prearrangements," as defined in 13.9.5.7 NMAC, and to similar policies and certificates. In case of any conflict with 13.9.16 NMAC or 13.9.18 NMAC, the provisions of 13.9.19 NMAC, as affecting funeral plans, preneed insurance or prearrangements, or similar policies and certificates, shall control.  
[13.9.19.2 NMAC - N, 1/1/2009]

**13.9.19.3 STATUTORY AUTHORITY:** Sections 59A-2-8, 59A-2-9, 59A-8-5, and 59A-20-31 NMSA 1978.  
[13.9.19.3 NMAC - N, 1/1/2009]

**13.9.19.4 DURATION:**  
Permanent.  
[13.9.19.4 NMAC - N, 1/1/2009]

**13.9.19.5 EFFECTIVE DATE:**  
January 1, 2009, unless a later date is cited at the end of a section.  
[13.9.19.5 NMAC - N, 1/1/2009]

**13.9.19.6 OBJECTIVE:** The purpose of this regulation is to establish for preneed insurance minimum mortality standards for reserves and nonforfeiture values, and to require the use of the 1980 commissioners standard ordinary (CSO) life valuation mortality table for use in determining the minimum standard of valuation of reserves and the minimum standard nonforfeiture values for preneed insurance. This rule is based on the national association of insurance commissioners' "preneed life insurance minimum standards for determining reserve liabilities and nonforfeiture values model regulation" (model 817) adopted in March, 2008.  
[13.9.19.6 NMAC - N, 1/1/2009]

**13.9.19.7 DEFINITIONS:**  
**A. "2001 CSO mortality table"** means the definition in 13.9.16 NMAC and 13.9.18 NMAC.

**B. "Ultimate 1980 CSO"** means the commissioners' 1980 standard ordinary life valuation mortality tables (1980 CSO) without ten-year (10-year) selection factors, incorporated into the 1980 amendments to the NAIC Standard Valuation Law approved in December 1983.

**C. "Preneed insurance"** means "funeral plans," as defined in Section 59A-49-4 NMSA 1978, and "preneed funeral contracts or prearrangements," as defined in 13.9.5.7 NMAC.

[13.9.19.7 NMAC - N, 1/1/2009]

**13.9.19.8 MINIMUM VALUATION MORTALITY STANDARDS:** For preneed insurance, as defined in paragraph C of 13.9.19.7 NMAC, and similar policies and contracts, the minimum mortality standard for determining reserve liabilities and nonforfeiture values for both male and female insured shall be the Ultimate 1980 CSO.

[13.9.19.8 NMAC - N, 1/1/2009]

**13.9.19.9 MINIMUM VALUATION INTEREST RATE STANDARDS:**  
**A.** The interest rates used in determining the minimum standard for valuation of preneed insurance shall be the calendar year statutory valuation interest rates as defined in Section 59A-8-5 NMSA 1978.

**B.** The interest rates used in determining the minimum standard for nonforfeiture values for preneed insurance shall be the calendar year statutory nonforfeiture interest rates as defined in Section 59A-20-31 NMSA 1978.

[13.9.19.9 NMAC - N, 1/1/2009]

**13.9.19.10 MINIMUM VALUATION METHOD STANDARDS:**

**A.** The method used in determining the standard for the minimum valuation of reserves of preneed insurance shall be the method defined in Section 59A-8-5 NMSA 1978.

**B.** The method used in determining the standard for the minimum nonforfeiture values for preneed insurance shall be the method defined in Section 59A-20-31 NMSA 1978.

[13.9.19.10 NMAC - N, 1/1/2009]

**13.9.19.11 TRANSITION RULES:**

**A.** For preneed insurance policies issued on or after the effective date of this regulation and before January 1, 2012, the 2001 CSO may be used as the minimum standard for reserves and minimum standard for nonforfeiture benefits for both male and female insureds.

**B.** If an insurer elects to use the 2001 CSO as a minimum standard for any policy issued on or after the effective date of this regulation and before January 1, 2012, the insurer shall provide, as a part of the actuarial opinion memorandum submitted in support of the company's asset adequacy testing, an annual written notification to the domiciliary commissioner or superintendent of insurance. The notification shall include:

(1) a complete list of all preneed insurance policy forms that use the 2001 CSO as a minimum standard;

(2) a certification signed by the appointed actuary stating that the reserve methodology employed by the company in determining reserves for the preneed insurance policies issued after the effective date and using the 2001 CSO as a minimum standard, develops adequate reserves (for the purposes of this certification, the preneed insurance policies using the 2001 CSO as a minimum standard cannot be aggregated with any other policies.); and

(3) supporting information regarding the adequacy of reserves for preneed insurance policies issued after the effective date of this regulation and using the 2001 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

**C.** Preneed insurance policies issued on or after January 1, 2012, must use the Ultimate 1980 CSO in the calculation of minimum nonforfeiture values and minimum reserves.

[13.9.19.11 NMAC - N, 1/1/2009]

**HISTORY OF 13.9.19 NMAC:**  
[RESERVED]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
SECURITIES DIVISION**

**TITLE 12 TRADE, COM-  
MERCE AND BANKING  
CHAPTER 11 SECURITIES  
PART 17 USE OF SENIOR-  
SPECIFIC CERTIFICATIONS AND  
PROFESSIONAL DESIGNATIONS**

**12.11.17.1 ISSUING AGENCY:**  
Regulation and Licensing Department -  
New Mexico Securities Division.  
[12.11.17.1 NMAC - N, 12/31/2008]

**12.11.17.2 SCOPE:** All persons  
that engage in providing advice as to value  
of or the advisability of investing in, pur-  
chasing or selling securities.  
[12.11.17.2 NMAC - N, 12/31/2008]

**12.11.17.3 STATUTORY  
AUTHORITY:** Section 58-13B-48 NMSA  
1978 authorizes the director to make,  
amend and rescind rules as are necessary to  
carry out the provisions of the New Mexico  
Securities Act of 1986 (Sections 58-13B-1  
through 58-13B-57 NMSA 1978), here-  
inafter referred to in this Chapter 11 as the  
"New Mexico Securities Act".  
[12.11.17.3 NMAC - N, 12/31/2008]

**12.11.17.4 DURATION:**  
Permanent.  
[12.11.17.4 NMAC - N, 12/31/2008]

**12.11.17.5 EFFECTIVE DATE:**  
12/01/2008, unless a later dated is cited at  
the end of a section.  
[12.11.17.5 NMAC - N, 12/31/2008]

**12.11.17.6 OBJECTIVE:** To pro-  
hibit use of certifications and professional  
designations in such a way as to mislead  
investors regarding whether the user has  
special expertise in advising or serving sen-  
ior citizens or retirees in connection with  
the offer and sale of securities.  
[12.11.17.6 NMAC - N, 12/31/2008]

**12.11.17.7 DEFINITIONS:**  
[RESERVED]  
[12.11.17.7 NMAC - N, 12/31/2008]

**12.11.17.8 USE OF SENIOR-  
SPECIFIC CERTIFICATIONS AND  
PROFESSIONAL DESIGNATIONS:**  
The use of a senior-specific certification or  
designation by any person in connection  
with the offer, sale, or purchase of securi-  
ties, or the provision of advice as to the  
value of or the advisability of investing in,  
purchasing, or selling securities, either  
directly or indirectly or through publica-

tions or writings, or by issuing or promul-  
gating analyses or reports relating to securi-  
ties, that indicates or implies that the user  
has special certification or training in advis-  
ing or servicing senior citizens or retirees,  
in such a way as to mislead any person is  
prohibited and, in addition, shall be a dis-  
honest and unethical practice in the securi-  
ties, commodities, investment, franchise,  
banking, finance, or insurance business  
within the meaning of Section 58-13B-  
16A(2)(h) NMSA 1978. The prohibited use  
of such certifications or professional desig-  
nations includes, but is not limited to, the  
following:

A. use of a certification or  
professional designation by a person who  
has not actually earned or is otherwise inel-  
igible to use such certification or designa-  
tion;

B. use of a non-existent or  
self-conferred certification or professional  
designation;

C. use of a certification or  
professional designation that indicates or  
implies a level of occupational qualifica-  
tions obtained through education, training  
or experience that the person using the cer-  
tification or designation does not have; and

D. use of a certification or  
professional designation that was obtained  
from a designating or certifying organiza-  
tion that:

(1) is primarily engaged in the  
business of instruction in sales or market-  
ing;

(2) does not have reasonable stan-  
dards or procedures for assuring the compe-  
tency of its designees or certificants;

(3) does not have reasonable stan-  
dards or procedures for monitoring and dis-  
ciplining its designees or certificants for  
improper or unethical conduct; or

(4) does not have reasonable con-  
tinuing education requirements for its  
designees or certificants in order to main-  
tain the designation or certificate.

[12.11.17.8 NMAC - N, 12/31/2008]

[The text of this rule is consistent with the  
model rule on use of senior-specific certifi-  
cations and professional designations  
adopted by the North American Securities  
Administrators Association, Inc on  
03/20/2008.]

**12.11.17.9 DESIGNATIONS  
AWARDED BY RECOGNIZED DESIG-  
NATED OR CERTIFYING ORGANI-  
ZATIONS:** There is a rebuttable presump-  
tion that a designating or certifying orga-  
nization is not disqualified solely for pur-  
poses of subsection 12.11.17.8.D when the  
organization has been accredited by:

A. the American National  
Standards Institute; or

B. the National  
Commission for Certifying Agencies; or

C. an organization that is  
on the United States Department of  
Education's list entitled "Accrediting  
Agencies recognized for Title IV Purposes"  
and the designation or credential issued  
therefrom does not primarily apply to sales  
or marketing.

[12.11.17.9 NMAC - N, 12/31/2008]

**12.11.17.10 FACTORS TO BE  
CONSIDERED TO DETERMINE  
WHETHER A TERM IS A SENIOR-  
SPECIFIC CERTIFICATION OR PRO-  
FESSIONAL DESIGNATION:** In deter-  
mining whether a combination of words (or  
an acronym standing for a combination of  
words) constitutes a certification or profes-  
sional designation indicating or implying  
that a person has special certification or  
training in advising or servicing senior citi-  
zens or retirees, factors to be considered  
shall include:

A. use of one or more  
words such as "senior," "retirement,"  
"elder," or like words, combined with one  
or more words such as "certified," "regis-  
tered," "chartered," "adviser," "specialist,"  
"consultant," "planner," or like words, in  
the name of the certification or professional  
designation; and

B. the manner in which  
those words are combined.

[12.11.17.10 NMAC - N, 12/31/2008]

**12.11.17.11 EXCEPTION FOR  
CERTAIN JOB TITLES:** For purposes of  
this section, financial services regulatory  
agency includes, but is not limited to, an  
agency that regulates broker-dealers, invest-  
ment advisers, or investment companies as  
defined under the Investment Company Act  
of 1940. For purposes of this part, a certifi-  
cation or professional designation does not  
include a job title within an organization  
that is licensed or registered by a state or  
federal financial services regulatory agency,  
when that job title:

A. indicates seniority or  
standing within the organization; or

B. specifies an individ-  
ual's area of specialization within the organ-  
ization.

[12.11.17.11 NMAC - N, 12/31/2008]

**12.11.17.12 APPLICATION OF  
PART NOT EXCLUSIVE:** Nothing in  
this part shall limit the director's authority  
to enforce existing provisions of law.

[12.11.17.12 NMAC - N, 12/31/2008]

**HISTORY OF 12.11.17 NMAC:**  
[RESERVED]

**NEW MEXICO  
REGULATION AND  
LICENSING DEPARTMENT  
SECURITIES DIVISION**

This is an amendment to 12.11.4 NMAC Sections 5, 15, and 16, effective 12-31-2008. This is also the official renumber and reformat of those relevant portions of 12 NMAC 11.2, Subpart 10, Rules of Conduct; Subpart 11, Prohibited Business Practices, (filed 4-19-99), which were renumbered, reformatted, amended and replaced by 12.11.4 NMAC, Broker Dealer and Sales Representatives Rules of Conduct and Prohibited Business Practices effective 12-31-2008. Appropriate descriptive names of Sections 8, 9, 10, 11, 12, 13, 14 and 15 were also confirmed effective 12-31-2008.

**12.11.4.5 EFFECTIVE DATE:** May 1, 1999, unless a later date is cited at the end of a section.  
[5-1-99; 12.11.4.5 NMAC - Rn, 12 NMAC 11.2.1.5 & A, 12-31-2008]

**12.11.4.15 PROHIBITED BUSINESS PRACTICES BY BROKER-DEALERS:** The following are deemed to be unethical and dishonest conduct or practices by a broker-dealer under Section 58-13B-16A(2)(h) NMSA 1978 without limiting those terms to the practices specified herein:

- A.** causing any unreasonable delay in the delivery of securities purchased by any of its customers, or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;
- B.** inducing trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
- C.** recommending to a customer the purchase, sale or exchange of any securities without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry concerning the customer's investment objectives, financial situation and needs, and any other information known by the broker-dealer;
- D.** executing a transaction on behalf of a customer without authority to do so;
- E.** executing a transaction for the account of a customer upon instruction from a third party without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;
- F.** exercising any discre-

tionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders, or both;

**G.** extending, arranging for, or participating in arranging for credit to a customer in violation of the Securities Exchange Act of 1934 or the regulations of the federal reserve board;

**H.** executing any transaction in a margin account without obtaining from its customer a written margin agreement not later than 15 calendar days after the initial transaction in the account;

**I.** failing to segregate customers' free securities or securities in safe-keeping;

**J.** hypothecating a customer's securities without having a lien thereon unless written consent of the customer is first obtained, except as permitted by rules of the U.S. securities and exchange commission;

**K.** charging its customer an unreasonable commission or service charge in any transaction executed as agent for the customer;

**L.** entering into a transaction for its own account with a customer with an unreasonable markup or markdown;

**M.** entering into a transaction for its own account with a customer in which a commission is charged;

**N.** entering into a transaction with or for a customer at a price not reasonably related to the current market price;

**O.** executing orders for the purchase by a customer of securities not registered or exempted unless the transaction is exempted under the New Mexico Securities Act;

**P.** representing itself as a financial or investment planner, consultant, or adviser, when the representation does not accurately describe the nature of the services offered, the qualifications of the person offering the services, and the method of compensation for the services;

**Q.** violating any material rule of any securities exchange or national securities association of which it is a member with respect to any customer, transaction or business in this state;

**R.** failing to furnish to a customer purchasing securities in an offering, not later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

**S.** introducing customer transactions on a "fully disclosed" basis to another broker-dealer that is not licensed

under the New Mexico Securities Act; ~~and~~

**T.** recommending to a customer that the customer engage the services of an investment adviser that is not licensed under New Mexico Securities Act or the Investment ~~[Advisors]~~ Advisers Act of 1940~~[-]; and~~

**U.** using in a misleading manner any term or abbreviation that states or implies that a person has special expertise, certification, or training in financial planning, including but not limited to, the misleading use of a senior-specific certification or designation as set forth in 12.11.17 NMAC.

[12 NMAC 11.2.10, 12-30-95; 12 NMAC 11.2.11.1, 5-1-99; 12.11.4.15 NMAC - Rn, 12 NMAC 11.2.11.1 & A, 12-31-2008]

**12.11.4.16 PROHIBITED BUSINESS PRACTICES BY SALES REPRESENTATIVES:** The following are deemed to be unethical or dishonest conduct or practices by a sales representative under Section 58-13B-16A(2)(h) NMSA 1978 without limiting those terms to the practices specified herein:

**A.** borrowing money or securities from, or lending money or securities to, a customer;

**B.** acting as a custodian for money, securities or an executed stock power of a customer;

**C.** effecting securities transactions with a customer not recorded on the regular books or records of the broker-dealer which the sales representative represents, unless the transactions are disclosed to, and authorized in writing by, the broker-dealer prior to execution of the transactions;

**D.** effecting transactions in securities for an account operating under a fictitious name, unless disclosed to, and permitted in writing by, the broker-dealer or issuer which the sales representative represents;

**E.** sharing directly or indirectly in profits or losses in the account of any customer without first obtaining written authorization of the customer and the broker-dealer which the sales representative represents;

**F.** dividing or otherwise splitting commissions, profits or other compensation receivable in connection with the purchase or sale of securities in this state with any person not so licensed as a sales representative for the same broker-dealer, or for a broker-dealer under direct or indirect common control;

**G.** using advertising describing or relating to the sales representative's securities business unless the advertising clearly identifies the name of the representative's employing broker-dealer or

issuer;

**H.** misrepresenting the services of a licensed investment adviser on whose behalf the sales representative is soliciting business or accounts; and

**I.** engaging in any of the practices specified in [Paragraphs 12.11.4.15B, C, D, E, F, G, H, O, P, Q, R and T NMAC] Subsections B, C, D, E, F, G, H, O, P, Q, R, T and U of 12.11.4.15 NMAC. [12 NMAC 11.2.10, 12-30-95; 12 NMAC 11.2.11.2, 5-1-99; 12.11.4.16 NMAC - Rn, 12 NMAC 11.2.11.2 & A, 12-31-2008]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT SECURITIES DIVISION

This is an amendment to 12.11.7 NMAC, Sections 5 and 13, effective 12-31-2008. This is also the official renumber and reformat of those relevant portions of 12 NMAC 11.3, Subpart 9, Rules of Conduct and Subpart 10, Prohibited Business Practices (filed 4-19-99), were renumbered, reformatted, amended and replaced by 12.11.7 NMAC, Investment Advisers And Investment Adviser Representatives Rules of Conduct And Prohibited Business Practices, effective 12-31-2008. Appropriate descriptive names of Sections 8, 9, 10, 11, 12 and 13 were also confirmed effective 12-31-2008.

### TITLE 12 TRADE, COMMERCE AND BANKING CHAPTER 11 SECURITIES PART 7 INVESTMENT ADVISERS[;] AND INVESTMENT ADVISER REPRESENTATIVES [~~AND FEDERAL COVERED ADVISERS~~] RULES OF CONDUCT AND PROHIBITED BUSINESS PRACTICES

**12.11.7.5 EFFECTIVE DATE:** May 1, 1999, unless a later date is cited at the end of a section. [5-1-99; 12.11.7.5 NMAC - Rn, 12 NMAC 11.3.1.5 & A, 12-31-2008]

**12.11.7.13 PROHIBITED BUSINESS PRACTICES BY INVESTMENT ADVISERS:** The following are deemed to be unlawful, unethical, or dishonest conduct or practice by an investment adviser or investment adviser representative without limiting those terms to the practices specified herein:

**A.** recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information

furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser;

**B.** exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten (10) business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specific security shall be executed, or both;

**C.** inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account;

**D.** placing an order to purchase or sell a security for the account of a client without authority to do so;

**E.** placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client;

**F.** borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a depository institution engaged in the business of loaning funds;

**G.** loaning money to a client unless the investment adviser is a depository institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser;

**H.** misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser or any employee of the investment adviser, or to misrepresent the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading;

**I.** providing a report or recommendation to any advisory client prepared by someone other than the investment adviser without disclosing that fact; this prohibition does not apply to a situation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service;

**J.** charging a client an unreasonable advisory fee;

**K.** failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser or any of its

employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

**(1)** compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

**(2)** charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment adviser or its employees;

**L.** guaranteeing a client that a specific result will be achieved (e.g. gain or no loss), with advice which will be rendered;

**M.** publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940;

**N.** disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client;

**O.** taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds and the adviser's action does not comply with the requirements of Rule 206(4)-2 under the Investment Advisers Act of 1940;

**P.** entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or non-performance, whether the contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

**Q.** failing to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940;

**R.** entering into, extending or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940; this provision shall apply to all investment advisers licensed or required to be licensed under the New Mexico Securities Act, notwithstanding whether such investment adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940;

**S.** to indicate, in an advisory contract, any condition, stipulation or provisions binding any person to waive

compliance with any provision of the New Mexico Securities Act or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940;

**T.** engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative, contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940;

**U.** engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the New Mexico Securities Act or any rule or regulation thereunder[-]; and

**V.** using in a misleading manner any term or abbreviation that states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in 12.11.17 NMAC.

[12 NMAC 11.3.10, 12-30-95; 12 NMAC 11.3.10.2, 5-1-99; 12.11.7.13 NMAC - Rn, 12 NMAC 11.3.10.2 & A, 12-31-2008]

**NEW MEXICO TAXATION  
AND REVENUE  
DEPARTMENT**

**TITLE 3: TAXATION  
CHAPTER 13: BUSINESS TAX CREDITS  
PART 7: ALTERNATIVE ENERGY PRODUCT MANUFACTURERS TAX CREDIT**

3.13.7.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[3.13.7.1 NMAC - N, 12/31/08]

3.13.7.2 **SCOPE:** This part applies to all persons carrying on a manufacturing operation in New Mexico that produce alternative energy products and who may be eligible to obtain the alternative energy product manufacturers tax credit.  
[3.13.7.2 NMAC - N, 12/31/08]

3.13.7.3 **STATUTORY AUTHORITY:** Section 7-9J-1 through 8 and 9-11-6.2 NMSA 1978.  
[3.13.7.3 NMAC - N, 12/31/08]

3.13.7.4 **DURATION:** Permanent.

[3.13.7.4 NMAC - N, 12/31/08]

3.13.7.5 **EFFECTIVE DATE:** 12/31/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[3.13.7.5 NMAC - N, 12/31/08]

3.13.7.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Alternative Energy Product Manufacturers Tax Credit Act.  
[3.13.7.6 NMAC - N, 12/31/08]

3.13.7.7 **DEFINITIONS:** **“SUBJECT TO DEPRECIATION”** **DEFINED:** For purposes of Section 7-9J-2 NMSA 1978 “subject to depreciation” means the taxpayer’s federal income tax return must include a depreciation expense with respect to the manufacturing equipment for which an alternative energy product manufacturer’s tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is “subject to depreciation”.  
[3.13.7.7 NMAC - N, 12/31/08]

3.13.7.8 **[RESERVED]**

3.13.7.9 **ITEMS NOT “MANUFACTURING EQUIPMENT”:** Tangible personal property which is not a machine, mechanism or tool, or a component or fitting thereof, is not “manufacturing equipment” for the purpose of the Alternative Energy Product Manufacturers Tax Credit Act. Accordingly such items as furniture, shelving and supplies are not “manufacturing equipment”. Equipment that is neither essential to nor used in conjunction with the manufacturing plant will not qualify for the alternative energy product manufacturers tax credit, even if that equipment is physically located in the plant. Nonqualifying equipment may include, but is not limited to: coffee makers, kitchen equipment used in an employee cafeteria and televisions or radios used in an employee lounge or in a reception area.  
[3.13.7.9 NMAC - N, 12/31/08]

3.13.7.10 **ITEMS WHICH MAY BE INCLUDED AS “MANUFACTURING EQUIPMENT”:** The term “manufacturing operation” is defined as a plant where personnel perform production tasks “in conjunction with equipment not previously existing at the site” to produce alternative energy products. “Manufacturing equipment” must be exclusively and directly employed in the manu-

facturing process and must be physically located in the plant and used in conjunction with the production of alternative energy products. Therefore, equipment used in conjunction with the production of alternative energy products may include, but is not limited to, such items as manufacturing process equipment, lights, boilers, air conditioners, smoke detectors and other equipment essential to maintaining the proper climate for the manufacturing process, packaging equipment used to put the manufactured product in marketable form, warehousing equipment and computers used to control the manufacturing process or to inventory and schedule the shipping of manufactured products.

[3.13.7.10 NMAC - N, 12/31/08]

3.13.7.11 **VALUE OF QUALIFIED “MANUFACTURING EQUIPMENT”:** The value of qualified manufacturing equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code of 1986.

[3.13.7.11 NMAC - N, 12/31/08]

3.13.7.12 **APPLICATION OF THE CREDIT:**

**A.** The credit allowed by Section 7-9J-4 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.

**B.** The credit may not be applied to a report period prior to the report period that includes the first day on which qualified expenditures were made for equipment included on the application for which the credit was approved by the department.  
[3.13.7.12 NMAC - N, 12/31/08]

3.13.7.13 **CARRY FORWARD OF UNUSED CREDITS:** Unused alternative energy product manufacturers tax credit may be carried forward for five years from the end of the calendar year in which the credit was first approved by the department.

[3.13.7.13 NMAC - N, 12/31/08]

3.13.7.14 **USING THE CREDIT:**

**A.** Any amount of alternative energy product manufacturers tax credit claimed and approved may be applied by the claimant only against the modified combined tax liability owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.

**B.** Examples:  
(1) Corporation T sets up a manufacturing operation in New Mexico. T subsequently qualifies for \$50,000 in alternative energy product manufacturer’s tax

credit. After applying \$13,000 to its own modified combined tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the manufacturing operation. T may not transfer the \$37,000 remaining authorized alternative energy product manufacturer's tax credit to S nor may S apply any of the remaining tax credit to S's modified combined tax liability. T, to the extent T still has modified combined tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for alternative energy product manufacturers tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed alternative energy product manufacturers tax credit held by a predecessor. [3.13.7.14 NMAC - N, 12/31/08]

**3.13.7.15 EQUIVALENT OF ONE FULL-TIME EMPLOYEE:** To calculate the number of full-time-equivalent employees, add the average weekly hours worked or expected to be worked by all employees whose regular weekly work hours are or are expected to be less than 40 hours. Divide the total by 40 and round down to the nearest whole number. The rounded number plus the number of employees who work or are expected to work an average of 40 or more hours per week is the number of full-time equivalent employees. [3.13.7.15 NMAC - N, 12/31/08]

**3.13.7.16 REPORTING NUMBER OF EMPLOYEES - ESTIMATES:** To meet the employment requirement, the credit claimant must report the number of full-time-equivalent employees employed on the day the credit is applied for. This number is to be compared with the number of full-time-equivalent employees on the same day in the prior year. Because complete employee data may not be available for the day on which the credit is applied for, a credit claimant may estimate the number of full-time-equivalent employees employed on the day the credit is applied for, provided that the claimant must provide the actual number of full-time-equivalent employees within 45 days from the end of the calendar quarter in which the claim is applied for. The fact that an estimate is used in the claim must be clearly indicated. The

department may withhold approval of the claim until the correct number is provided and will deny the claim if the correct number is not provided.

[3.13.7.16 NMAC - N, 12/31/08]

HISTORY OF 3.13.7 NMAC:  
[RESERVED]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

**TITLE 3: TAXATION**  
**CHAPTER 13: BUSINESS TAX CREDITS**  
**PART 8: OTHER TAX CREDITS**

**3.13.8.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[3.13.8.1 NMAC - N, 12/31/08]

**3.13.8.2 SCOPE:** This part applies to all persons who own an interest in a qualified generating facility in New Mexico who may be eligible to obtain the advanced energy tax credit.  
[3.13.8.2 NMAC - N, 12/31/08]

**3.13.8.3 STATUTORY AUTHORITY:** Sections 7-9G-2 and 9-11-6.2 NMSA 1978.  
[3.13.8.3 NMAC - N, 12/31/08]

**3.13.8.4 DURATION:** Permanent.  
[3.13.8.4 NMAC - N, 12/31/08]

**3.13.8.5 EFFECTIVE DATE:** 12/31/08, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[3.13.8.5 NMAC - N, 12/31/08]

**3.13.8.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Advanced Energy Tax Credit, per the Other Tax Credits Act.  
[3.13.8.6 NMAC - N, 12/31/08]

**3.13.8.7 DEFINITIONS:** [RESERVED]

**3.13.8.8 VALUE OF ELIGIBLE GENERATION PLANT COSTS:** The value of eligible generation plant costs pursuant to Section 7-9G-2 NMSA 1978 shall be the adjusted basis established for the qualified generating facility under the applicable provisions of the Internal Revenue Code of 1986.  
[3.13.8.8 NMAC - N, 12/31/08]

**3.13.8.9 ELIGIBLE GENERATION PLANT COST MUST BE "SUBJECT TO DEPRECIATION":** For purposes of Section 7-9G-2 NMSA 1978 eligible generation plant costs must be subject to depreciation. "Subject to depreciation" means the taxpayer's federal income tax return must include a depreciation expense with respect to the eligible generation plant costs for which an advanced energy tax credit is sought or claimed. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 is "subject to depreciation".  
[3.13.8.9 NMAC - N, 12/31/08]

**3.13.8.10 APPLICATION OF THE CREDIT:**  
A. The credit allowed by Section 7-9G-2 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.  
B. The credit may not be applied to a report period prior to the report period that includes the first day on which eligible generation plant costs were incurred and included on the application for which the credit was approved by the department.  
[3.13.8.10 NMAC - N, 12/31/08]

**3.13.8.11 CARRY FORWARD OF UNUSED CREDITS:** Unused advanced energy tax credit allowed by Section 7-9G-2 NMSA 1978 may be carried forward for five years from the end of the calendar year in which the credit was approved by the department.  
[3.13.8.11 NMAC - N, 12/31/08]

**3.13.8.12 USING THE CREDIT:**  
A. Any amount of advanced energy tax credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including an affiliate.  
B. Examples:

(1) Corporation T sets up a qualified generating facility in New Mexico. T subsequently qualifies for \$50,000 in advanced energy tax credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the qualified generating facility. T may not transfer the \$37,000 remaining authorized advanced energy tax credit to S

nor may S apply any of the remaining tax credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.

(2) When two or more corporations merge, the resultant corporation is a continuation of any predecessor corporation. When a business organization changes its form, as for example from a sole proprietorship to a corporation or from a corporation to a limited liability company, so that the resultant entity is a successor in business to the predecessor, the resultant entity shall be deemed a continuation of the predecessor for advanced energy tax credit purposes. In both cases, since there is no transfer, the resultant entity may claim any amount of approved but unclaimed advanced energy tax credit held by a predecessor.

[3.13.8.12 NMAC - N, 12/31/08]

3.13.8.13           **LIMITATION ON OTHER CREDITS:** Expenditures for which a taxpayer claims the advanced energy tax credit pursuant to Section 7-9G-2 NMSA 1978 may not be used to qualify for or claim any other credit that may be applied against gross receipts tax, compensating tax or withholding tax.

[3.13.8.13 NMAC - N, 12/31/08]

HISTORY OF 3.13.8 NMAC:  
[RESERVED]

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**End of Adopted Rules Section**

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## Other Material Related to Administrative Law

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### NEW MEXICO GAME COMMISSION

#### STATE GAME COMMISSION NOTICE OF SPECIAL MEETING

On Saturday, January 10, 2009, 1:00 p.m. — 4:00 p.m. at the NM Museum of Natural History & Science, Multi-Purpose Rm., 1st Floor, located at 1801 Mountain Rd., NW, Albuquerque NM 87104, four (4) or more New Mexico State Game Commissioners will be present at the same time to attend the public meeting to discuss the issue of sportsman access to private lands. There will be no public business, action items, or decisions made as this gathering is strictly for attendance by interested members of the public to discuss the above-noted issue. No public testimony will be given but the public will be encouraged to interact with the Commissioners and other members of the public.

Further information about details of this meeting can be obtained from the Office of the Director, New Mexico Department of Game and Fish at (505) 476-8008 or the Department's web site at [www.wildlife.state.nm](http://www.wildlife.state.nm)

The meeting will be adjourned upon completion of the agenda.

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 meeting, please contact Shirley Baker at (505) 476-8030. Please contact Ms. Baker at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please contact Shirley Baker if a summary or other type of accessible form is needed.

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### NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### PUBLIC NOTICE

The Human Services Department is required by Federal Law to file a State Plan that describes how the Department will administer the State's TANF-funded cash assistance program. The State Plan must be submitted every two years to the United States Department of Health and Human Services (DHHS), Administration for Children and Families (ACF).

The Department announced the proposed TANF State Plan through Human Services Register Volume 31, Number 34. The Human Services Register included notification of a public hearing held on October 14, 2008 at Pollon Plaza in Santa Fe. The Department allowed for a 45-day public comment period from August 29 through October 14, 2008. A public hearing was held on October 14, 2008. No testimony was received, but two comments were received before the October 14, 2008 deadline.

The Department has reviewed all the comments and taken them under consideration and incorporated them into the TANF State Plan.

The final State Plan is available on the Human Services Department website at: <http://www.hsd.state.nm.us/isd/ISDRegistersPlansTax.html>

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

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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 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

**2009**

<b>Volume XX</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 30
Issue Number 3	February 2	February 13
Issue Number 4	February 16	February 27
Issue Number 5	March 2	March 16
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 14
Issue Number 10	May 15	May 29
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 3	August 14
Issue Number 16	August 17	August 31
Issue Number 17	September 1	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	November 2	November 13
Issue Number 22	November 16	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.