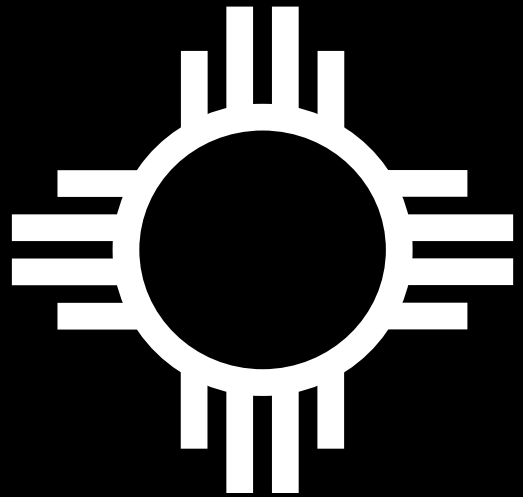


**NEW
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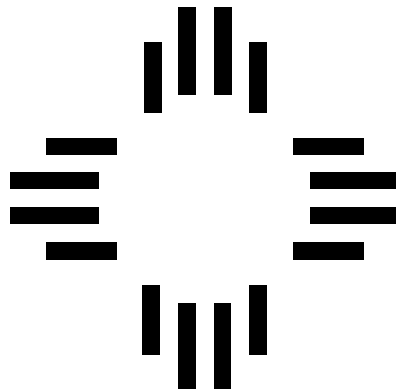


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Issue Number 13
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The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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New Mexico Register

Volume XV, Number 13

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Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE SERVICES

NOTICE OF PUBLIC HEARING

The New Mexico Children, Youth and Families Department, Juvenile Justice Services will hold a formal public hearing on Thursday, August 12, 2004 beginning at 9:00 a.m., in the Auditorium at the Youth Diagnostic & Development Center, 4000 Edith Blvd., NE; Albuquerque, to consider revision of 8.14.4 NMAC Facility Medical and Mental Health Services. This regulation applies generally to Juvenile Justice Services and its medical and mental health staff in providing medical and mental health services to clients committed to the custody of the Department pursuant to the Delinquency Act.

The proposed regulation may be reviewed, or a copy obtained during the regular business hours of Juvenile Justice Services; 1100 Paseo de Peralta (Fifth Floor); PO Drawer 5160; Santa Fe, NM 87502.

Interested persons may testify at the hearing or submit written comments at the above address no later than 4:00 p.m. August 12, 2004. Written comments will be given the same consideration as oral testimony given at the hearing.

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 Juvenile Justice Services at 505-827-7629. Juvenile Justice Services requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION BOARD OF FINANCE

NEW MEXICO
DEPARTMENT OF FINANCE AND
ADMINISTRATION
STATE BOARD OF FINANCE

NOTICE OF BOARD OF FINANCE RULE CHANGE

The State Board of Finance is in the process of revising one of its rules: Real Property Acquisitions, Sales, Trades, or Leases 1.5.23 NMAC. Copies of the existing rule and proposed changes are available in room 181, Bataan Memorial Building, Santa Fe NM 87501. The board will consider proposed changes at its September 14th meeting. Please mail or deliver written comments on the proposed changes to the same location by August 20, 2004 to Scott Stovall.

NEW MEXICO DEPARTMENT OF HEALTH BEHAVIORAL HEALTH SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.32.8 NMAC "Opioid Treatment Programs". The Hearing will be held at 9:30 a.m. on Friday, August 20, 2004 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted in order to establish standards for the Opioid Treatment Program to be consistent with the SAMHSA/CSAT federal regulations and the OTP accreditation requirements of nationally recognized accreditation bodies approved by SAMHSA/CSAT, such as CARF and JCAHO.

A copy of the proposed regulation can be obtained from:

Jim Masica, Program Manager
Behavioral Health Services
Division/Community Programs Bureau
New Mexico Department of Health
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
505-827-2371

Please submit any written comments regarding the proposed regulation to the attention of Jim Masica at the above address prior to the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or participate in the hearing, please contact Jim Masica by telephone at 505-827-2371. The Department requests at least ten (10)

days advance notice to provide requested special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m. on August 11, 2004, at the State Capitol, Room 318 (corner of Paseo de Peralta and Don Gaspar), Santa Fe, New Mexico. The subject of the hearing will be School-Based Services for Recipients Under Twenty-One Years of Age.

School-Based Services for Recipients under Twenty-one Years of Age, 8.320.6 NMAC, will be changed to incorporate additional rendering service providers to the School-Based Services program by adding Physical Therapy, Occupational Therapy and Speech Language Pathology assistants; Licensed Practical Nurses (LPNs); Licensed Bachelor's Level Social Workers; and Licensed Professional Counselors; and supervisory requirements related to Licensed Bachelor's Level Social Workers and Licensed Professional Counselors. In addition, coverage of certain administrative activities is also being added. The proposed regulations also clarify that Medicaid School Based-Services are exempt from the rule that Medicaid is the payer of last resort. Other proposed changes include: the addition of "other state funded educational agencies" as eligible providers, requiring the LEA to appoint a program liaison, and clarification of nursing services.

Interested persons may submit written comments no later than 5:00 p.m., August 11, 2004, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are

available for review on our Website at www.state.nm.us/hsd/register.html or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

STATE OF NEW MEXICO
INFORMATION TECHNOLOGY COM-
MISSION

IN THE MATTER OF REPEALING AND
REPLACING 1.12.5. NMAC,
OVERSIGHT OF PROJECT AND PRO-
GRAM MANAGEMENT AND CERTIFI-
CATION

NOTICE OF PROPOSED RULEMAKING AND PROCEDURAL ORDER

I. SOLICITATION OF COMMENTS

The Information Technology Commission (Commission) issues this Notice of Proposed Rulemaking to provide an opportunity for public comment and to create a record for a decision on a proposed repeal and replace of rule: 1.12.5 NMAC, Oversight of Project and Program Management. The Commission requests written comments from all interested persons and entities on the proposed new rule.

All relevant and timely comments, including data, views, or arguments, will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order issued by the Commission.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed repealed and replaced rule on or before July 31, 2004. All relevant and timely comments, including data, views, or arguments will be considered by the Commission before final action is taken in this proceeding. Written

comments must be filed prior to the deadline for receipt of comments either in hard copy with the Deputy Chief Information Officer, Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501 or by electronic mail to the Deputy Chief Information Officer at cio@state.nm.us. The rule number must appear on each submittal. Comments will be available for public inspection during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

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

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

IT IS FURTHER ORDERED that staff of the Office of the Chief Information Officer shall cause a copy of this Notice to be published once in the *New Mexico Register*, once in the *Albuquerque Journal*, and to be posted to the Internet at <http://www.cio.state.nm.us> all on or before July 15, 2004. To obtain a copy of the proposed rule: (1) send the rule name, rule number, and a self-addressed envelope to the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501; (2) call the Office of the Chief Information Officer at 505-476-0400 with the rule name and rule number; e-mail the Deputy Chief Information Officer at cio@state.nm.us with the rule name and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail); or download the proposed rule from the Internet at <http://www.cio.state.nm.us>. The proposed rule is also available for inspection and copying during regular business hours in the

Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT individuals with a disability who are in need of summaries or other types of accessible forms of the proposed rule or comments may contact the Deputy Chief Information Officer at (505)476-0400.

DONE, this 23rd day of June, 2004.

INFORMATION TECHNOLO-
GY COMMISSION

By: Herb Pitts, Acting Chair

NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

STATE OF NEW MEXICO
INFORMATION TECHNOLOGY COM-
MISSION

IN THE MATTER OF ADOPTING 1.12.10
NMAC,
INTERNET, INTRANET, EMAIL, AND
DIGITAL NETWORK USAGE

NOTICE OF PROPOSED RULEMAKING AND PROCEDURAL ORDER

I. SOLICITATION OF COMMENTS

The Information Technology Commission (Commission) issues this Notice of Proposed Rulemaking to provide an opportunity for public comment and to create a record for a decision on a proposed new rule: 1.12.10 NMAC, Internet, Intranet, Email and Digital Network Usage. The Commission requests written comments from all interested persons and entities on the proposed new rule.

All relevant and timely comments, including data, views, or arguments, will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Order issued by the Commission.

II. ORDER

IT IS THEREFORE ORDERED that this Notice of Proposed Rulemaking

and Procedural Order be issued.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposed rule on or before August 8, 2004. All relevant and timely comments, including data, views, or arguments will be considered by the Commission before final action is taken in this proceeding. Written comments must be filed prior to the deadline for receipt of comments either in hard copy with the Deputy Chief Information Officer, Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501 or by electronic mail to the Deputy Chief Information Officer at cio@state.nm.us. The rule number must appear on each submittal. Comments will be available for public inspection during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

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

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

IT IS FURTHER ORDERED that staff of the Office of the Chief Information Officer shall cause a copy of this Notice to be published once in the *New Mexico Register*, once in the *Albuquerque Journal*, and to be posted to the Internet at <http://www.cio.state.nm.us> all on or before July 15, 2004. To obtain a copy of the proposed rule: (1) send the rule name, rule number, and a self-addressed envelope to the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501; (2) call the Office of the Chief Information

Officer at 505-476-0400 with the rule name and rule number; e-mail the Deputy Chief Information Officer at cio@state.nm.us with the rule name and rule number (you will receive a copy of the rule in Microsoft WORD format by return e-mail); or download the proposed rule from the Internet at <http://www.cio.state.nm.us>. The proposed rule is also available for inspection and copying during regular business hours in the Office of the Chief Information Officer, 404 Montezuma, Santa Fe, NM 87501.

PLEASE BE ADVISED THAT individuals with a disability who are in need of summaries or other types of accessible forms of the proposed rule or comments may contact the Deputy Chief Information Officer at (505)476-0400.

DONE, this 23rd day of June, 2004.

INFORMATION TECHNOLOGY COMMISSION

By: Herb Pitts, Acting Chair

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO SUPER-
INTENDENT OF INSURANCE**

**IN THE MATTER OF:
THE 2004 ANNUAL
TITLE
INSURANCE DOCKET NO.
HEARING. 04-00184-IN**

**NOTICE OF HEARING TO
CONSIDER
THE PROMULGATION OF PREMI-
UM RATES AND PROCEDURAL
ORDER**

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

1. A public hearing shall be held commencing on **Friday, November 19, 2004 at 9:30 a.m.**, and continuing thereafter as necessary in the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico. The hearing shall be held for the purpose of considering title insurance rates. The proceeding shall be a formal administrative hearing within the meaning of NMSA 1978, Section 59A-4-17. Certain provisions of the Administrative Procedures Act, specifically, NMSA 1978, Sections 12-8-10 through 12-8-13, and Section 12-8-15, shall apply to the proceeding.

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

3. Any person intending to file a rate proposal or otherwise participate as a party to this proceeding shall file a motion for leave to intervene on or before **Friday, August 6, 2004**. Objections to motions for leave to intervene shall be filed on or before **Monday, August 16, 2004**.

4. Techniques of pre-hearing discovery permitted in civil actions in New Mexico, such as interrogatories, depositions, and requests for production of documents, may be employed by Staff or any party commencing on or after **Friday, September 10, 2004**. The time in which to respond to interrogatories and requests for production of documents shall be shortened to 10 calendar days after service.

5. Staff of the Insurance Division Title Insurance Bureau ("Staff") and all other persons who have been granted leave to intervene ("parties") who wish to submit independent written rate proposal(s) and actuarial reports(s) relating to the rate proposals(s) shall file such proposal(s) and report(s) in this docket on or before **Friday, October 15, 2004**.

6. Staff and all parties shall file the following items in this docket on or before **Friday, October 15, 2004**:

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

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

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

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

8. Staff and all parties shall file the following items in this docket on or before **Friday, October 29, 2004**:

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

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

9. Staff and all parties shall file Objections to Pre-filed Rebuttal Testimony and exhibits in this docket on or before **Friday, November 5, 2004**:

10. Staff and all parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing, stipulations regarding undisputed material facts and admissibility of all uncontested documents, and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding the promulgation of premium rates and any stipulations reached by the parties on or before **Monday, November 8, 2004**.

11. No discovery requests or notices of taking deposition shall be served after **Monday, November 8, 2004**.

12. A pre-hearing conference shall be held on **Wednesday, November 10, 2004, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions and other outstanding matters related to the hearing, and to set the agenda for the hearing.

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

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

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

and other applicable law.

16. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Ann Echols at (505) 827-4526 no later than **Monday, November 15, 2004**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Ann Echols if a summary or other type of accessible form is needed.

**DONE AND ORDERED this
_____ day of June 2004.**

ERIC P. SERNA

New Mexico Superintendent of Insurance

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO SUPER-
INTENDENT OF INSURANCE**

**IN THE MATTER
OF: THE 2004
ANNUAL TITLE
INSURANCE
HEARING.**

**DOCKET NO.
04-00184-IN**

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

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

1. A public hearing shall be held on **Thursday, November 18, 2004, at 9:30 a.m.**, at the State Capitol Building, Room 321, Santa Fe, New Mexico. The hearing shall be held for the purpose of adopting and/or amending regulations and forms, for determining the Insurance Fraud

Fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14 (1999), and for addressing other matters related to the business of title insurance. The proceeding shall be informal within the meaning of NMSA 1978, Section 59A-4-18.

2. Staff of the Insurance Division ("Staff") and all other persons wishing to submit proposals relating to adopting and/or amending regulations and forms, determining the Insurance Fraud Fund assessment for title insurers pursuant to NMSA 1978, Section 59A-16C-14 (1999), and other matters related to the business of title insurance shall file the following items in this docket on or before **Friday, October 8, 2004**:

a) written proposal(s) and an electronic word document version of each proposal; and

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

3. All interested persons may testify at the hearing.

4. Interested persons who have not filed proposals, but who wish to comment on proposals filed by others in this docket, may do so by filing written comments on or before **Friday, October 22, 2004**.

5. All responsive comments shall be filed no later than **Friday, November 5, 2004**.

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

7. The parties shall meet and confer to discuss the narrowing of issues to be addressed at the hearing and any other unresolved issues to be addressed at the hearing. The parties shall prepare and file a joint proposed hearing agenda regarding regulation of title insurance other than promulgation of premium rates on or before **Monday, November 8, 2004**.

8. A pre-hearing conference shall be held on **Wednesday, November 10, 2004, at 9:30 a.m.** at the Public Regulation Commission Hearing Room, Fourth Floor, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico. The Superintendent or his designated hearing officer shall preside at the pre-hearing conference. The purpose

of the pre-hearing conference is to narrow the issues to be addressed at the hearing, to hear all pending motions related to the hearing, and to set the agenda for the hearing.

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

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

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

12. Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, should contact Ann Echols at (505) 827-4526 no later than November 15, 2004. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Ann Echols if a summary or other type of accessible form is needed.

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

DONE AND ORDERED this _____ day of June 2004.

ERIC P. SERNA
New Mexico Superintendent of Insurance

NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY

New Mexico Public Schools Insurance Authority Notice of Rulemaking.

The New Mexico Public Schools Insurance Authority will hold a hearing on August 17, 2004 at 9:00 a.m. at NMPSIA's offices at 410 Old Taos Highway, Santa Fe, New Mexico 87501. NMPSIA will consider adoption of two rules. The first concerns the late filing of a First Notice of Injury by employers and provides for monetary penalties and for employer reimbursement to NMPSIA if the State Workman's Compensation Administration fines NMPSIA because of an employer's late-filed report. The second rule requires NMPSIA to comply with Governmental Accounting Standards Board Statement #10. Written comments concerning either rule should be submitted to NMPSIA's General Counsel, Frank Coppler, at 645 Don Gaspar Avenue, Santa Fe, New Mexico 87505. Written comments must be received by 5:00 p.m., August 9, 2004 to be considered. Oral comments will be taken at the hearing. For copies of the proposed rules, please write Mr. Coppler at the above address or call his office at (505) 988-5656. NMPSIA's Board will consider formal adoption of the proposed rules at its regular meeting at 9:00 a.m., September 2, 2004 at the Cooperative Education Services Building, 4216 Balloon Park Road NE, Albuquerque, New Mexico 87108

NEW MEXICO RACING COMMISSION

NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the Turf Club, Ruidoso Downs Racetrack & Casino, 1461 Highway 70 West, Ruidoso Downs, New Mexico, commencing in executive session at 8:30 o'clock a.m. on Wednesday, July 28, 2004. The public session will begin at 9:30 o'clock a.m. on Wednesday, July 28, 2004. The Commission will consider adoption of proposed amended rule for incorporation into the Rules Governing Horse Racing in New Mexico No. 16.47.1.12 NMAC (regarding jockeys and apprentice jockeys).

Copies of these proposed rules may be obtained from India Hatch, Agency Director, New Mexico Racing Commission, 300 San Mateo N.E., Suite 110,

Albuquerque, New Mexico 87108, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

India Hatch
Agency Director

Dated: June 23, 2004

NEW MEXICO BOARD OF VETERINARY MEDICINE

NOTICE OF PUBLIC HEARING

The New Mexico Board of Veterinary Medicine will hold a specially scheduled Board meeting and Public Hearing on Friday July 23, 2004 commencing at 8:30 a.m. at the Albuquerque TVI Workforce Training Center located at 5600 Eagle Rock Ave. NE in Albuquerque, New Mexico. At 9:00 am the Board will be conducting a Regulation Hearing to adopt and amend the following regulation: NMAC 16.25.9.17 - Pharmaceutical Services. Interested persons may secure copies of the proposed regulation change by contacting the Board of Veterinary Medicine Office. The Board may go into Executive Session at any time to discuss licensee and/or personnel matters.

The NM Board of Veterinary Medicine does not discriminate against persons with special needs. Any individual who wishes to attend this meeting and who requires special accommodations should contact the Board Office at least five working days prior to the meeting. This will afford us the time necessary to make arrangements to accommodate your special needs. Interested persons may secure copies of the proposed regulations by contacting the Board office. Meeting materials also can be provided in various accessible forms upon request.

Board of Veterinary Medicine
7301 Jefferson NE Suite C
Albuquerque, New Mexico 87109
(505) 841-9112
vetboard.info@state.nm.us

**End of Notices and
Proposed Rules Section**

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Adopted Rules

NEW MEXICO AGING AND LONG TERM SERVICES DEPARTMENT

TITLE 9 HUMAN RIGHTS
CHAPTER 2 AGE
PART 23 PATIENT CARE
MONITORING IN LONG-TERM
CARE FACILITIES

9.2.23.1 ISSUING AGENCY:
Aging and Long-Term Services
Department.
[9.2.23.1 NMAC - N, 7/15/04]

9.2.23.2 SCOPE: This rule
applies to the general public.
[9.2.23.2 NMAC - N, 7/15/04]

9.2.23.3 STATUTORY
AUTHORITY: This rule is adopted pur-
suant to the terms of Sections 28-4-6(B),
28-17-5 and 28-17-19 NMSA 1978, Law
2004, Ch. 23, Sec. 6(E) and Laws 2004, Ch.
53, Sec. 10.
[9.2.23.3 NMAC - N, 7/15/04]

9.2.23.4 DURATION:
Permanent.
[9.2.23.4 NMAC - N, 7/15/04]

9.2.23.5 EFFECTIVE DATE:
July 15, 2004, unless a later date is cited in
the history note at the end of a section.
[9.2.23.5 NMAC - N, 7/15/04]

9.2.23.6 OBJECTIVE: This
rule implements the provisions of the
Patient Care Monitoring Act, Laws 2004,
Ch. 53.
[9.2.23.6 NMAC - N, 7/15/04]

9.2.23.7 DEFINITIONS: The
following terms are used in this rule:

A. "department" means
the aging and long-term services depart-
ment;

B. "facility" means a
long-term care facility licensed pursuant to
the provisions of Section 24-1-5 NMSA
1978, other than an intermediate care facili-
ty for the mentally retarded, and may also
include:

- (1) a skilled nursing facility;
- (2) an intermediate care nursing
facility;
- (3) a nursing facility;
- (4) an adult residential shelter
care home;
- (5) a boarding home;
- (6) any adult care home or adult
residential care facility; and
- (7) any swing bed in an acute care

facility or extended care facility;

C. "monitoring device"
means a surveillance instrument that broad-
casts or records activity, but does not
include a still camera;

D. "patient" means a per-
son who is a resident of a facility;

E. "program" means the
New Mexico long-term care ombudsman
program;

F. "roommate" means a
patient who shares a room in a facility with
a patient who has chosen, or whose surro-
gate has chosen, to install and use a moni-
toring device; and

G. "surrogate" means a
legal guardian or a legally appointed substi-
tute decision-maker who is authorized to act
on behalf of a patient.
[9.2.23.7 NMAC - N, 7/15/04]

9.2.23.8 AUTHORIZATION
AND USE OF A MONITORING
DEVICE:

A. A patient or surrogate
may authorize installation and use of a moni-
toring device in a facility provided that:

(1) the facility is given notice of
the installation on a form prescribed by the
department;

(2) if the monitoring device
records activity visually, such recording
shall include a record of the date and time;

(3) the monitoring device and all
installation and maintenance costs are paid
for by the patient or surrogate;

(4) written consent is given by
each roommate or each roommate's surro-
gate on a form prescribed by the depart-
ment;

(5) the monitoring is conducted in
accordance with any limitation placed on it
as a condition of consent by a roommate or
the roommate's surrogate; and

(6) if a roommate or the room-
mate's surrogate also wishes to install and
use a monitoring device, the patient or sur-
rogate consents to the installation and use
on terms that are no more restrictive than
any that have been placed on the patient's or
surrogate's installation and use.

B. A patient or surrogate
may establish and a facility shall accommo-
date limits on the use, including the time of
operation, direction, focus or volume, of a
monitoring device.
[9.2.23.8 NMAC - N, 7/15/04]

9.2.23.9 INSTALLATION
AND USE OF A MONITORING
DEVICE:

A. At the time of admis-
sion to a facility, a patient shall be offered
the option to have a monitoring device, and

a record of the patient's authorization or
choice not to have a monitoring device shall
be kept by the facility and shall be made
accessible to the program.

B. After authorization,
consent and notice, a patient or surrogate
may install, operate and maintain a moni-
toring device in the patient's room at the
patient's or surrogate's expense. The
patient or surrogate is responsible for all
costs associated with installing, operating
and maintaining the monitoring device,
except the cost of electricity.

C. A patient or surrogate is
responsible for selecting the type of moni-
toring device that will be used in the
patient's room. If the patient or surrogate
chooses to install a monitoring device that
uses Internet technology, the monitoring
device must have at least 128-bit encryption
and enable a secure socket layer ("SSL").
[9.2.23.9 NMAC - N, 7/15/04]

9.2.23.10 ACCOMMODATION
BY FACILITY: A facility shall cooperate
to accommodate the installation of a moni-
toring device, provided the installation does
not place undue burden on the facility.

A. Reasonable accommo-
dation includes, but is not limited to, the fol-
lowing:

(1) providing a reasonably secure
place to mount a monitoring device;

(2) providing access to power
sources, if feasible;

(3) rearranging a room, if feasi-
ble;

(4) accommodating the limits a
patient or roommate, or a surrogate of
either, may place on the use of a monitoring
device, if feasible;

(5) referring a patient or surrogate
to potential roommates or surrogates of
roommates who have indicated on a current
patient authorization form that they would
consent to monitoring if a current roommate
or surrogate of a roommate withholds con-
sent; and

(6) allowing patients, roommates
and potential roommates to change rooms,
when feasible, in those cases where consent
is an issue.

B. Undue burden includes,
but is not limited to, making structural
changes to a room by anyone other than a
licensed contractor, or a non-licensed per-
son approved by the facility.

C. If a patient or surrogate
chooses to install a monitoring device that
uses Internet technology for visual monitor-
ing, a facility shall allow the patient or sur-
rogate to install any necessary Internet
access line(s), if feasible. This may require
access to the facility's telecommunications

or equipment room, and the facility shall provide such access. In addition:

(1) a patient or surrogate is responsible for contracting with an Internet provider and for any expense for activation, installation and on-going service; and

(2) the facility is not required to allow Internet access through facility or corporate networks that also maintain confidential patient, medical, financial or personnel records.

D. A facility has the burden of proving that a requested accommodation is not feasible or constitutes an undue burden.

E. A facility may impose a refundable damage deposit of up to \$150 to cover the cost of repairing any damages to the facility caused by the installation or removal of a monitoring device. Within thirty days after the removal of a monitoring device, the facility shall deliver to the patient or surrogate a written statement itemizing any deductions from the deposit together with the balance of the deposit. The facility has the burden of proving that any deductions from the deposit are reasonable.

[9.2.23.10 NMAC - N, 7/15/04]

9.2.23.11 CONSENT OF PATIENT:

A. Consent to the authorization for the installation and use of a monitoring device may be given only by a patient or surrogate.

(1) If a patient has capacity to consent, only the patient may do so, notwithstanding the terms of any durable power of attorney, advance health-care directive, or similar instrument.

(2) If a patient does not have capacity to consent, only the patient's surrogate may give consent. If there is a dispute among surrogates within the same priority class under the Uniform Health-Care Decisions Act, none of them can give consent.

(3) A patient is presumed to have capacity to consent unless the patient has been determined to be incapacitated by a court of competent jurisdiction or by two qualified health-care professionals, one of whom shall be the primary physician, in accordance with the terms of the Uniform Health-Care Decisions Act.

B. Consent to the authorization for the installation and use of a monitoring device shall include a release of liability for the facility for a violation of the patient's right to privacy insofar as the use of the monitoring device is concerned.

C. A patient or surrogate may reverse a choice to have or not have a monitoring device installed and used at any time, after notice to the facility on a form prescribed by the department.

[9.2.23.11 NMAC - N, 7/15/04]

9.2.23.12 CONSENT OF ROOMMATES:

A. Consent of a roommate to the installation and use of a monitoring device by a patient or surrogate may be given only by the roommate or the roommate's surrogate.

(1) If a roommate has capacity to consent, only the roommate may do so, notwithstanding the terms of any durable power of attorney, advance health-care directive, or similar instrument.

(2) If a roommate does not have capacity to consent, only the roommate's surrogate may give consent. If there is a dispute among surrogates within the same priority class under the Uniform Health-Care Decisions Act, none of them can give consent.

(3) A roommate is presumed to have capacity to consent unless the roommate has been determined to be incapacitated by a court of competent jurisdiction or by two qualified health-care professionals, one of whom shall be the primary physician, in accordance with the terms of the Uniform Health-Care Decisions Act.

B. Consent to the authorization for the installation and use of a monitoring device shall include a release of liability for the facility for a violation of the roommate's right to privacy insofar as the use of the monitoring device is concerned.

C. A roommate or the roommate's surrogate may condition or limit consent on the use, including the time of operation, direction, focus or volume, of a monitoring device.

D. A roommate or the roommate's surrogate may reverse a choice to give, not give, or limit consent at any time, after notice to the facility on a form prescribed by the department.

E. If a monitoring device is being used in the room of a patient and a new roommate, who has not yet consented to the use of the monitoring device, moves into the room, monitoring shall cease until the new roommate, or the new roommate's surrogate, has consented in accordance with this section.

[9.2.23.12 NMAC - N, 7/15/04]

9.2.23.13 FORMS:

A. The department shall prescribe forms for implementing the Patient Care Monitoring Act and this rule. No facility shall use any forms other than those prescribed by the department.

B. A facility shall maintain the original copies of all completed forms relating to a patient for at least three years from the date of the patient's discharge from the facility. The forms shall be accessible to the program at all times.

[9.2.23.13 NMAC - N, 7/15/04]

9.2.23.14 AUTHORIZATION FORM: The form for the authorization of installation and use of a monitoring device shall provide for:

A. consent of the patient or surrogate authorizing the installation and use of the monitoring device;

B. notice to the facility of the patient's installation of a monitoring device and specifics as to its type, function and use;

C. consent of any roommate, or that roommate's surrogate;

D. notice of release from liability for privacy violation through the use of the monitoring device; and

E. waiver of the patient's right to privacy in conjunction with the use of the monitoring device.

[9.2.23.14 NMAC - N, 7/15/04]

9.2.23.15 UNAUTHORIZED USE:

In any civil action against the facility, material obtained through the use of a monitoring device may not be used if the monitoring device was installed or used without the knowledge of the facility or without the prescribed form.

[9.2.23.15 NMAC - N, 7/15/04]

9.2.23.16 IMMUNITY:

Compliance with the provisions of the Patient Care Monitoring Act shall be a complete defense against any civil or criminal action brought against the patient, surrogate or facility for the use or presence of a monitoring device.

[9.2.23.16 NMAC - N, 7/15/04]

9.2.23.17 NOTICE TO CURRENT PATIENTS:

Within six months of the effective date of the Patient Care Monitoring Act, all facilities shall provide to each patient or surrogate a form prescribed by the department explaining the provisions of the Patient Care Monitoring Act and giving each patient or surrogate a choice to have a monitoring device installed in the patient's room. Copies of the completed form shall be kept by the facility and shall be made accessible to the program.

[9.2.23.17 NMAC - N, 7/15/04]

9.2.23.18 NOTICE OF MONITORING DEVICE:

The facility shall post a notice in a conspicuous place at the entrance to a room with a monitoring device that a monitoring device is in use in that room of the facility. The notice shall be posted at the facility's expense and shall state in English and Spanish: "WARNING: THIS ROOM IS MONITORED ELECTRONICALLY."

[9.2.23.18 NMAC - N, 7/15/04]

9.2.23.19 PROHIBITED ACTS:

No person or patient shall be denied admission to or discharged from a facility or be otherwise discriminated against or retaliated against because of a choice to authorize installation and use of a monitoring device. Any person who violates this section shall be subject to the provisions of Section 28-17-19 NMSA 1978 and Rule 9.2.21 NMAC.

A. The civil penalty for denying a person admission to a facility or for discharging a patient from a facility in violation of this section shall be \$10,000 per occurrence.

B. The minimum civil penalty for failing to accommodate the installation of a monitoring device, in violation of Section 9.2.23.10 of this rule, shall be \$1,000.

C. The minimum civil penalty for any person other than a patient or surrogate interfering with the use of a monitoring device or destroying a recording made by a monitoring device shall be \$1,000.

D. The minimum civil penalty for failing to refund a damage deposit in accordance with the terms of Section 9.2.23.10 of this rule shall be \$500.

E. The civil penalties for other forms of discrimination or retaliation that violate this section shall be determined in a manner consistent with Rule 9.2.21 NMAC.

F. Except for violations of Subsections B, C and D of this section, it is irrelevant whether the installation or use of a monitoring device was authorized in accordance with the terms of the Patient Care Monitoring Act and this rule. [9.2.23.19 NMAC - N, 7/15/04]

9.2.23.20 CRIMINAL ACTS:

Any person other than a patient or surrogate found guilty of intentionally hampering, obstructing, tampering with or destroying a monitoring device or a recording made by a monitoring device installed in a facility pursuant to the Patient Care Monitoring Act is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978. [9.2.23.20 NMAC - N, 7/15/04]

History of 9.2.23 NMAC: [RESERVED]

**ALBUQUERQUE /
BERNALILLO COUNTY
AIR QUALITY CONTROL
BOARD**

This is an amendment to 20.11.7 NMAC, Sections 1; 2; 3; 6; 7; 9; 10; 11; 12; 13; 14; 15; 16; 17; 18; and 19, effective 8/1/04. Amendments to 20.11.7 NMAC, VARIANCE PROCEDURE include: modified

“Scope” and “Objective” sections that specify the statute, regulations and permits from which a variance may be requested and federal requirements from which a variance cannot be granted; new and amended definitions; an amended process for seeking a variance petition that establishes detailed timelines, technical requirements for a variance petition, a written recommendation by the Environmental Health Department Director, the burden of proof requirements and notification requirements, and includes notifications to neighborhood associations and the general public; incorporation of the variance requirements imposed by the New Mexico Air Quality Control Act; the process for a separate evidentiary phase hearing; requirements regarding presentation of technical evidence; and a modified “Stay of Enforcement” section that specifies when the Board can grant a stay and also establishes timelines for deciding whether to grant a stay.

20.11.7.1 ISSUING AGENCY:

Albuquerque-Bernalillo County Air Quality Control Board, c/o Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103. Telephone: (505) 768-2600. [3/24/82. . .12/1/95; 20.11.7.1 NMAC - Rn, 20 NMAC 11.07.I.1, 10/1/02; A, 8/1/04]

20.11.7.2 SCOPE:

A. [~~This Part~~] 20.11.7 NMAC establishes procedures and criteria for obtaining a variance from [~~requirements prescribed by the Board~~] a limitation or other requirement (together referred to as “limitation” in 20.11.7 NMAC) prescribed under the Air Quality Control Act, a regulation of the Albuquerque-Bernalillo county air quality control board or a permit condition imposed by the department. However, the board cannot grant a variance from federal requirements in 20.11.8 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, 20.11.62 NMAC, 20.11.63 NMAC and 20.11.64 NMAC. Granting or approval of a variance by the board does not mean automatic approval by the EPA.

B. Exempt: [~~This Part~~] 20.11.7 NMAC does not apply to sources within Bernalillo county [~~which~~] that are located on Indian lands over which the Albuquerque-Bernalillo county air quality control board lacks jurisdiction. [12/1/95; 20.11.7.2 NMAC - Rn, 20 NMAC 11.07.I.2, 10/1/02; A, 8/1/04]

20.11.7.3 STATUTORY AUTHORITY:

[~~This Part~~] 20.11.7 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5[~~C~~] and 74-2-8; the Joint Air Quality Control Board Ordinance, Bernalillo

County Ordinance 94-5 [~~Section~~] Sections 3, 4 and 8; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 [~~Section~~] Sections 9-5-1-3, 9-5-1-4 and 9-5-1-8. [3/24/82. . .12/1/95; 20.11.7.3 NMAC - Rn, 20 NMAC 11.07.I.3, 10/1/02; A, 8/1/04]

20.11.7.6 OBJECTIVE: The objective of [~~this Part~~] 20.11.7 NMAC is to establish procedures and criteria by which a petitioner may seek a variance [~~to a limitation or regulation prescribed by the Board~~] from a limitation prescribed under the Air Quality Control Act, a regulation of the Albuquerque-Bernalillo county air quality control board or a permit condition imposed by the department. However, the board cannot grant a variance from federal requirements in 20.11.8 NMAC, 20.11.41 NMAC, 20.11.42 NMAC, 20.11.60 NMAC, 20.11.61 NMAC, 20.11.62 NMAC, 20.11.63 NMAC and 20.11.64 NMAC. [12/1/95; 20.11.7.6 NMAC - Rn, 20 NMAC 11.07.I.6, 10/1/02; A, 8/1/04]

20.11.7.7 DEFINITIONS: In addition to the definitions in 20.11.7.7 NMAC, the definitions 20.11.1 NMAC apply unless there is a conflict between definitions, in which case the definition in [~~this Part~~] 20.11.7 NMAC shall govern.

A. “Division” means the air quality division of the city of Albuquerque environmental health department or its successor agency.

B. “Ex parte contact” means oral or other communication with a board member or the board hearing officer regarding the merits of a pending variance petition if the contact occurs between the date the petition for variance is filed and the conclusion of the variance procedure, and if the contact is intended to or may affect the board member’s or hearing officer’s opinion regarding the merits of the pending variance petition.

[~~A~~]**C. “Petitioner”** means a person seeking a variance [~~from a regulation of the Board or limitation prescribed under any Part in Chapter 11, Title 20 NMAC~~] from a limitation of the Air Quality Control Act, the City of Albuquerque Joint Air Quality Control Board ordinance, the Bernalillo County Joint Air Quality Control Board ordinance, a regulation of the Albuquerque-Bernalillo county air quality control board, or a permit condition imposed by the department.

D. “Prima facie case” means evidence submitted by the petitioner during a hearing if the evidence is sufficient on its face to entitle the petitioner to prevail, before adverse evidence is presented at the hearing. [12/1/95; 20.11.7.7 NMAC - Rn, 20 NMAC 11.07.I.7, 10/1/02; A, 8/1/04]

20.11.7.9 SAVINGS CLAUSE:

Any amendment to 20.11.7 NMAC ~~[which]~~ that is filed with the state records center shall not affect actions pending for violation of the Air Quality Control Act, a city of Albuquerque or county of Bernalillo ordinance, [Air Quality Control Board Regulation 24 or Part 07] a regulation of the board or any permit condition imposed by the department. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, ~~[Part, or regulation section]~~ regulation or permit condition in effect at the time the violation was committed.

[12/1/95; 20.11.7.9 NMAC - Rn, 20 NMAC 11.07.I.9, 10/1/02; A, 8/1/04]

20.11.7.10 SEVERABILITY:

If any section, paragraph, sentence, clause, or word of ~~[this Part]~~ 20.11.7 NMAC [or any federal standards incorporated herein] is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of ~~[this Part]~~ 20.11.7 NMAC.

[12/1/95; 20.11.7.10 NMAC - Rn, 20 NMAC 11.07.I.10, 10/1/02; A, 8/1/04]

20.11.7.11 DOCUMENTS :

Documents incorporated and cited in ~~[this Part]~~ 20.11.7 NMAC may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

[12/1/95; 20.11.7.11 NMAC - Rn, 20 NMAC 11.07.I.11 & A, 10/1/02; A, 8/1/04]

20.11.7.12 [PETITIONS] PETITION FOR VARIANCE - FEE:

A. ~~[Any]~~ A person seeking a variance from a regulation of the board or a permit condition imposed by the department shall do so by ~~[filing]~~ delivering a written petition for variance ~~[with]~~ to the director and the division manager. The petitioner shall use petition forms [may be] obtained from the department. The petition form shall include information regarding how the public may obtain additional information from the division regarding the petition, including information regarding the date, time and place of any variance petition hearing before the board.

B. Petitions shall:

(1) be delivered to the director and the division manager within 30 consecutive days after the date the petitioner had actual or constructive knowledge of the limitation regarding which the petitioner is seeking a variance;

~~[or]~~ (2) state the petitioner's name [and] address, telephone number, and, if available, facsimile number, cellular telephone number and other contact information;

~~[or]~~ (3) state the date [of] the

petition is delivered to the director and the division manager;

~~[or]~~ (4) describe the facility or activity [for] regarding which the variance is sought, if applicable;

~~[or]~~ (5) state the address or description of the property upon which the facility is located, if applicable;

~~[or]~~ (6) identify [the regulation of the Board from which the variance is sought] and provide a citation to the limitation prescribed by the Air Quality Control Act, the regulation of the board or the permit condition imposed by the department regarding which the variance sought;

~~[or]~~ (7) state in detail the extent to which the petitioner wishes to vary from the [regulation or] limitation;

~~[or]~~ (8) state why the petitioner believes the variance is justified and can be approved by the board consistent with the requirements of the Air Quality Control Act, specifically, Subsections A and B of 74-2-8 NMSA 1978, Variances;

~~[or]~~ (9) state [why the petitioner believes the variance is desired] any time periods, limitations and other conditions that must be included in the variance in order to comply with Subsection C of 74-2-8 NMSA 1978; and

~~[or]~~ (10) be signed by the petitioner or by [some person on his behalf] a person who is authorized to sign on the petitioner's behalf. [Where] If the person signing is not the petitioner, [it shall set forth his] the person signing shall state in writing the source of the authority to sign on petitioner's behalf and shall attach the proof of authority to the petition that is delivered to the division manager.

C. The fee for filing a variance petition that is required by 20.11.2.11 NMAC shall accompany the copy of the petition that is delivered to the division manager.

D. No later than five consecutive days after the petitioner delivers a copy of the variance petition to the director and division manager, the petitioner shall send by certified mail a copy of the variance petition to the president of each city of Albuquerque and county of Bernalillo neighborhood association within one-half mile of the existing or proposed stationary source or location, if any, that is the subject of the petition for variance. When it is considered to be warranted, because of the characteristics and mobility of the pollutant(s) and density of the population, the department and the petitioner may agree that the petitioner will notify by certified mail additional neighborhood associations beyond the one-half mile line. The address of each president shall be obtained from the city of Albuquerque government and the county of Bernalillo government, as applicable. The petitioner shall pay all costs

related to the mailing. If the petitioner receives notice from the United States postal service that a certified letter was not delivered, the petitioner shall make a second, good faith effort to determine the valid neighborhood association contact and mailing address, and the petitioner shall mail or hand deliver a copy of the variance petition to that person. The petitioner shall complete a proof of delivery form obtained from the division, attach documentation establishing delivery of a copy of the petition and any additional good faith efforts to deliver, and shall deliver the completed proof of delivery form and related documentation to the division seven consecutive days before the start of the evidentiary phase of the variance petition hearing.

[3/24/82. . .12/1/95; 20.11.7.12 NMAC - Rn, 20 NMAC 11.07.I.12 & Repealed, 10/1/02; Rn, 20 NMAC 11.07.II.1, 10/1/02; A, 8/1/04]

20.11.7.13 ACTION BY THE DIRECTOR:

A. Within ~~[forty-five (45)]~~ 15 consecutive days after receipt of the variance petition, the director shall promptly investigate and evaluate the petition, ~~[make]~~ deliver a written recommendation to each member of the board, and mail a copy of the recommendation to the petitioner by certified mail. The director may deliver a second copy of the recommendation to the petitioner by facsimile or hand delivery. When the circumstances justify, the director may ~~;~~ extend the period of time by which ~~[he]~~ the director must submit ~~[his]~~ the director's recommendation to the board. The director shall notify the board and the petitioner in writing of the length of the extension and the reason for the extension. Sufficient reasons for an extension shall include failure by the petitioner to provide technical information necessary for the director to determine whether to recommend that the board grant or deny a variance.

B. The director's recommendation shall:

(1) state the date that ~~[#]~~ the recommendation is made;

(2) state the director's recommendation; and

(3) state the director's reason for the recommendation.

[3/24/82. . .12/1/95; 20.11.7.13 NMAC - Rn, 20 NMAC 11.07.II.2, 10/1/02; A, 8/1/04]

20.11.7.14 [ACTION BY BOARD] PETITIONER, DIRECTOR AND BOARD DEADLINES AND ACTIONS:

A. Within seven (7) days after the next regularly scheduled Board meeting at which a quorum is present fol-

lowing the date of the Director's recommendation:

(1) If the Board initially favors the granting of a variance, the Director shall notify the petitioner by certified mail of the date, time and place of the public hearing.

(2) If the Board is initially opposed to the granting of a variance, the Director shall notify the petitioner by certified mail of the Board's opposition, the reasons for its opposition and the fact that no public hearing will be held unless the petitioner requests one. The notice shall also inform the petitioner of the date by which he must request a public hearing.]

A. When the board receives the director's written recommendation, if the director recommends that the board grant a variance in whole or in part, then the board shall hold a public variance hearing. The board shall meet and decide whether to appoint a board hearing officer for the evidentiary phase of the board variance hearing, whether any hearing officer shall provide the board with proposed findings of fact and conclusions of law and a recommended decision, and the date, time and place the board will make a final decision regarding the variance petition. The board shall make a final decision regarding the variance petition no sooner than 20 consecutive days after the petitioner receives the director's recommendation required by 20.11.7.13 NMAC, and no later than 65 consecutive days after the board receives the director's recommendation that the board grant a variance in whole or in part.

B. Within 10 consecutive days after the board makes the procedural decisions required by Subsection A of 20.11.7.14 NMAC, the board shall send notice by certified mail to the petitioner regarding the date, time and place of the evidentiary phase of the hearing, and the date, time and place the board will make a final decision regarding the variance petition. Within the same 10-day period, the board shall deliver a copy of the notice to the division manager. The board may also deliver a second copy of the hearing notice to the petitioner by facsimile or hand delivery.

C. When the board receives the director's written recommendation, if the director is opposed to the board granting the variance as requested by the petitioner, the board shall only hold a public variance hearing if the board receives a timely written request for hearing from the petitioner. The petitioner shall deliver a written request for a board variance hearing to the director and the division manager within 15 consecutive days after the petitioner receives the director's recommendation that the board deny the variance. If the petitioner delivers a timely written request for a board variance hearing to the director

and the division manager, the board shall meet and decide whether to appoint a board hearing officer for the evidentiary phase of the board variance hearing, whether any hearing officer shall provide the board with proposed findings of fact and conclusions of law and a recommended decision, and the date, time and place the board will make a final decision regarding the variance petition. The board shall make a final decision regarding the variance petition no sooner than 20 consecutive days after the petitioner delivers a timely written request for a board variance hearing as required by Subsection C of 20.11.7.14 NMAC, and no later than 80 consecutive days after the board receives the director's recommendation that the board not grant the variance.

D. Within 10 consecutive days after the board makes the procedural decisions required by Subsection C of 20.11.7.14 NMAC, the board shall send notice by certified mail to the petitioner regarding the date, time and place of the evidentiary phase of the hearing, and the date, time and place the board will make a final decision regarding the variance petition. Within the same 10-day period, the board shall deliver a copy of the notice to the division manager. The board may also deliver a second copy of the hearing notice to the petitioner by facsimile or hand delivery.

[B.] E. [If the petitioner fails to request a public hearing within fifteen (15) days of the date the notice of the Board's opposition is received by him] If the petitioner fails to deliver a timely request for a board variance hearing as required by Subsection B of 20.11.7.14 NMAC, the petition shall be deemed denied, with prejudice.

C. If the petitioner makes a timely request for a public hearing, the Director shall, within five (5) days of the date of the receipt of the request notify the petitioner by certified mail of the date, time and place of the board hearing.]

[3/24/82. . .12/1/95; 20.11.7.14 NMAC - Rn, 20 NMAC 11.07.II.3, 10/1/02; A, 8/1/04]

20.11.7.15 NOTICE:

A. [At least seven (7) days prior to each hearing date, the Director] At least 14 consecutive days before the beginning of the evidentiary phase of a board variance hearing, the board shall publish notice of the [date, time, place and] subject of the variance hearing in a newspaper of general circulation in Bernalillo county, and shall also publish the date, time and place of the evidentiary phase of the hearing and the date, time and place the board will make a final decision regarding the variance petition.

B. The director shall maintain a file of persons [interested] who have delivered to the director a written statement of their interest in variance hearings, [and] The director shall make a reasonable effort to [notify them by mail of any actions of the Director or Board taken subject to 20.11.7.14 NMAC.] mail notice to all persons who have delivered a written statement of interest within the previous 12 months. The director shall mail written notice regarding variance recommendations made by the director, upcoming variance hearings before the board, and variance decisions made by the board.

[3/24/82. . .12/1/95; 20.11.7.15 NMAC - Rn, 20 NMAC 11.07.II.4, 10/1/02; A, 8/1/04]

20.11.7.16 HEARINGS - ACTIONS BY BOARD - WRITTEN ORDER:

[A.] Public variance hearings shall be held before the Board not less than fifteen (15) days nor more than forty-five (45) days from the date the Director mails the notice of the hearing to the petitioner.]

[B.] A. [Public hearings shall be held at a location agreeable to the Board and the petitioner.] Board variance hearings shall be public and shall be held at a public facility with public seating available.

B. Between the dates the petition for variance is filed and the conclusion of the variance procedure, no ex parte contact shall be made with a board member or the board's hearing officer. No board member or board hearing officer shall knowingly accept or participate in ex parte contact with any person regarding the merits of a pending proceeding unless the petitioner, the department and all other parties are present.

C. The board may designate a hearing officer to take evidence at the evidentiary phase of the variance hearing, and may designate a hearing officer to conduct the entire variance hearing. The board may direct the hearing officer to provide the board with proposed findings of fact, proposed conclusions of law and a recommended decision. A board member shall review the hearing officer's proposed findings, conclusions and recommended decision before the board member makes a final decision regarding the variance petition.

[D.] All costs of the hearing shall be borne by the petitioner, except those costs associated with Department witnesses or evidence.]

[E.] D. A record shall be made at each variance hearing [and an official transcript of the record shall be provided to the Board]. If the board directs a hearing officer to hold the evidence phase of a board variance hearing, and if any of the board

members who will make a decision regarding the petition for variance are absent during the evidence phase of the hearing, then the absent board members shall be provided with an audio recording or transcription of the evidence phase, and the hearing record will be made available to the absent board members before the absent members make a decision regarding the variance.

E. In a board variance hearing, the petitioner has the burden of proof, which requires the petitioner to present a prima facie case. The petitioner shall present the petitioner's case first and must prove by a preponderance of evidence the facts the petitioner is relying on to justify the relief the petitioner seeks in the petition for variance. If the petitioner has not established a prima facie case, the board shall dismiss or deny the petition for variance, and no other person shall be required to present evidence in opposition to the petition. If the petitioner has established a prima facie case, then any person opposed to the relief sought in the petition may present evidence in opposition to the petition to show why the petition should not be granted.

[J-] E. A petitioner may represent himself at the hearing or be represented by any other individual authorized to represent the petitioner.

[F-] G. In variance hearings, the technical rules of evidence and rules of civil procedure shall not apply, but the hearings shall be conducted so that all relevant views are amply and fairly presented without undue repetition. The board may require reasonable substantiation of statements or records tendered and may require any view to be stated in writing when the circumstances justify.

[G-] H. At the hearing, the board shall allow all persons a reasonable opportunity [at a hearing] to submit non-technical written and oral evidence and arguments and to introduce non-technical exhibits. Persons including the petitioner, but not the division for purposes of this sentence, who want to present oral or written technical evidence must deliver a timely statement of intent to present technical evidence as required in Subsection I of 20.11.7.16 NMAC. No later than five business days before the beginning of the evidentiary phase of the board variance hearing begins, if the division wants to present oral or written technical evidence, the division must deliver to the petitioner a statement of intent as required in Paragraphs (1) through (6) of Subsection I of 20.11.7.16 NMAC.

I. No later than five business days before the beginning of the evidentiary phase of the board variance hearing begins, any person who wishes to present oral or written technical evidence shall deliver a statement of intent to the director

on a form obtained from the division. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) an indication of whether the person filing the statement supports or opposes the petition at issue;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

[H-] J. [The petitioner and the Board shall have the right to call and examine witnesses, introduce exhibits and cross-examine persons who testify.] The petitioner, the division and any person at the hearing other than a board member may call witnesses and introduce exhibits. The petitioner, the division, board members and any person present at the hearing may cross-examine any person who testifies.

I. The Board shall allow reasonable cross examination of persons who testify at a hearing by persons who have submitted a written request to do so. Requests must be submitted to the Director by 4 p.m. on the day before the hearing.

K. No variance shall be granted until the board has considered the relative interests of the petitioner, other owners of property likely to be affected by the variance if granted, or any discharge involved, and the interests of the general public.

[K-] L. The board may grant the requested variance, in whole or in part, or may deny the variance. [All action taken] The decision made by the board shall be by written order and, at the sole discretion of the board, may be issued by the board at the end of the hearing or by the next regularly scheduled board meeting after [each] the variance hearing is closed, or, if the hearing was conducted before a hearing officer, by the next regularly scheduled board meeting after the date the transcript of the hearing [is] and exhibits are available for review by board members who were absent from the hearing. A copy of the board's order shall be mailed to the petitioner by certified mail. [All persons appearing or represented at the hearing shall be mailed notice of the Board's action.] The board shall send notice of the board's decision by regular mail to all persons who appeared before, or were represented at the hearing.

[L-] M. Orders of the board shall:

(1) state the petitioner's name and address;

(2) state the date the order is made;

(3) describe the facility for which the variance is sought, if applicable;

(4) identify the limitation prescribed under the Air Quality Control Act, the regulation of the board, or the permit condition imposed by the department [from] regarding which the variance was sought;

(5) state the decision of the board;

(6) if a variance is granted, state the period of time for which it is granted and specify a compliance schedule, if applicable; and

[G-] (7) state the reasons for the board's decision including whether and for what reasons the board has found, upon presentation of adequate proof, both (a) that compliance with the requirement of the Air Quality Control Act, the board regulation or the permit condition regarding which the variance is being granted either will result in an arbitrary and unreasonable taking of property or will impose an undue economic burden upon a lawful business, occupation or activity, and (b) that the granting of the variance will not either result in a condition injurious to health or safety, or cause or contribute to an air contaminant level in excess of any primary national ambient air quality standards; the order of the board also shall state that the board's decision regarding the variance petition complies with all applicable requirements of NMSA 1978 Section 74-2-8.

[M-] N. The director shall maintain a file of all variance orders [made] issued by the board. The file shall be open for public inspection.

O. The requirements of 20.11.7.16 NMAC shall apply to the stay hearing authorized by Subsection B of 20.11.7.18 NMAC.

[3/24/82 . . 12/1/95; 20.11.7.16 NMAC - Rn, 20 NMAC 11.07.II.5, 10/1/02; A, 8/1/04]

20.11.7.17 EFFECT OF ORDER OF BOARD - FAILURE TO APPEAR AT HEARING:

A. An order of the board is a final administrative decision and bars the petitioner from petitioning for the same variance without [special] specific permission from the board. At a public hearing by the board to consider again petitioner's proposal regarding the same variance, the board may consider, among other things, the development of new information and techniques to be sufficient justification for hearing a second petition.

B. If the petitioner or his authorized representative fails to appear at [the] a public hearing on the variance petition, the board shall proceed with the hearing on the basis of the petition.

[3/24/82. . .12/1/95; 20.11.7.17 NMAC - Rn, 20 NMAC 11.07.II.6, 10/1/02; A, 8/1/04]

20.11.7.18 STAY OF ENFORCEMENT:

~~[A. Subject to the emergency provisions of Section 12-14-9, NMSA, 1953, as amended, while a variance petition is pending, and before the Board takes final action on the petition, the Department may not enforce the corresponding regulation of the Board from which the variance is sought unless, in the opinion of the Director:~~

~~(1) Enforcement is reasonably necessary to protect the public interest of Bernalillo County;~~

~~(2) The variance petition was not filed in good faith;~~

~~(3) The petitioner is causing or contributing to air pollution to a greater degree than that requested by the variance petition.~~

~~B. The petitioner may submit with his variance petition a statement showing why he petitioner believes that non-enforcement is in the public interest of Bernalillo County.~~

~~C. The Director's opinion on the questions of public interest and good faith is discretionary and not subject to review.~~

~~D. The Director may re-examine his opinion at any time and, when the circumstances justify, make a different determination.~~

~~E. Provisions of this section do not apply to any subsequent petitioner for the same variance by the same petitioner, except as the Director may otherwise determine.]~~

A. From the date the petition for variance is delivered to the director and the division manager until the board takes final action on the petition for variance, the petitioner may file a motion for stay with the board, requesting a stay from enforcement action by the department. The board shall only grant the stay of enforcement if the motion for stay establishes:

(1) the likelihood that the petitioner will prevail on the merits of the petition for variance;

(2) a showing of irreparable harm to the petitioner unless the stay is granted;

(3) evidence that no substantial harm will result to other interested persons if the stay is granted; and

(4) a showing that there will be no resulting harm to the public interest if the stay is granted.

B. When the petitioner files the motion for stay with the board, the petitioner shall also deliver a copy of the motion for stay to the department. Within

65 days after the petitioner files the motion for stay and delivers a copy to the department, the board shall hold a hearing on the motion for stay ("stay hearing"). Twenty-one days before the board holds the stay hearing, the board shall deliver to the petitioner and to the department written notice of the date, time and place of the stay hearing before the board. The requirements of 20.11.7.16 NMAC, 20.11.7.17 NMAC, and 2.11.7.19 NMAC shall apply to the stay hearing as if the stay hearing were a variance hearing.

[3/24/82. . .12/1/95; 20.11.7.18 NMAC - Rn, 20 NMAC 11.07.II.7, 10/1/02; A, 8/1/04]

20.11.7.19 TIMELINESS:

~~[A.]~~When the last day for performing an act falls on a Saturday, Sunday or a ~~[legal, state or national]~~ city of Albuquerque or Bernalillo county legal holiday, the performance of the act is timely if performed on the next succeeding day ~~[which]~~ that is not a Saturday, Sunday or a ~~[legal, state or national]~~ city of Albuquerque or Bernalillo county legal holiday.

~~[B. All matters required to be filed or mailed under this Part are timely if deposited in the United States mail on or before the required date except as provided under Subsection I of 20.11.7.16 NMAC.]~~

[3/24/82. . .11/27/91; 20.11.7.19 NMAC - Rn, 20 NMAC 11.07.II.8, 10/1/02; A, 8/1/04]

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

This is an amendment to 8.15.2 NMAC, Sections 7, 9, 17, 19, 22 and 23, effective July 15, 2004.

8.15.2.7 DEFINITIONS:

A. "Attending a job training or educational program" means being physically present and actively participating in a job training or educational program.

B. "Child with special needs" means a child with a medically documented condition, which results in physical or mental incapacity requiring care and supervision by an adult.

C. "Closure" means the child care case is closed due to the client no longer having a need for child care assistance in accordance with program policy, being determined ineligible due to receipt of income in excess of the income guideline, moving out of state, failing to recertify in accordance with program procedures, completing or withdrawing from an educational or training program or being disqualified from participation in the program.

D. "Co-payment" means the portion of the approved and agreed upon monthly child care cost for clients receiving child care assistance that the client is required to pay to the child care provider. The department's payment to the provider is reduced by the co-payment amount.

E. "Department" means the New Mexico children, youth and families department.

F. "Earned income" means income received as wages from employment or as profit from self-employment.

G. "Incidental money" means earnings of a minor child for occasional work performed such as baby-sitting, cutting lawns, and other similar activities.

H. "Infant, toddler, preschool, school age" means the age categories used for assigning child care provider reimbursement rates, defined as follows:

(1) infant: 0-23 months

(2) toddler: 24 -35 months

(3) preschool: 3 to 5 year olds

(4) school age: 6 year olds and

older

I. "Job training and educational program" means participation in a short or long term educational or training program which provides specific job skills which allow the participant to enter the workforce and/or directly relate to enhancing job skills, including but not limited to the acquisition of a general equivalency diploma (GED), English as a second language, literacy training, vocational education training, secondary education including adult basic education and accredited high school programs, and post secondary institutions.

J. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds the standards of one of the following national accrediting bodies: the National Association for the Education of Young Children (NAEYC); the National Early Childhood Program Accreditation (NECPA); the American Montessori Society (AMS); the Montessori School Accreditation Commission (MSAC); the National Association of Family Child Care (NAFCC); ~~[the National Child Care Association (NCCA)]~~ the Council of Accreditation (COA); the National School Age Care Alliance (NSACA); or the Association of Christian Schools

International (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

K. "Non-traditional hours of care" means care provided between the ~~night time~~ after hours of 7 p.m. and 7 a.m. Monday through Friday and/or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

L. "Open case" means a case that has not been closed as a result of a failure to recertify, or that has not been closed due to becoming otherwise ineligible for child care assistance benefits.

M. "Overpayment" means a payment of child care assistance benefits received by a client or provider for which they are ineligible ~~for~~ based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

N. "Protective services child care" means child care services for children placed in the custody of the protective services ~~division~~ of the department.

O. "Provider types" means the characteristics of child care providers, which determine their approved reimbursement rate, capacity, staffing levels etc. as follows:

(1) "In-home" care means care provided in the child's own home.

(2) "Registered home" means child care provided in the home of a provider who is registered with the department's child and adult care food program to care for up to four (4) children.

(3) "Licensed family child care home" means child care provided in the home of a provider who is licensed by the department to care for up to six (6) children.

(4) "Licensed group child care home" means child care provided in the home of a provider who is licensed by the department to care for up to twelve (12) children.

(5) "Licensed center" means child care provided in a non-residential setting, which is licensed by the department to provide such care.

(6) "Out of school time care" means child care provided to a school age child up to age thirteen immediately before and/or immediately after a regularly scheduled school day and/or when regular school is not in session.

(7) "Provisional provider" means a child care provider selected by the parent who is not already registered or licensed. The provider is allowed a 90 calendar day grace period in which to become registered or licensed.

P. "Recertification"

means the process by which a client's eligibility to continue to receive child care assistance benefits are determined.

Q. "Registration/educational fee" means a fee charged to private pay and families receiving child care assistance for materials and supplies.

R. "Residing with" means living in a household which provides shelter and care to a child during the non-working hours of the child's parent or guardian.

S. "Suspension" means that the child care case is kept open, but benefits are not paid.

T. "TANF" means the temporary assistance to needy families program administered by the U.S. department of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

U. "Teen parent" means a biological parent under the age of 20 who is attending high school or working towards a general equivalency diploma (GED).

V. "Termination" means the child care case is terminated due to cause.

W. "Underpayment" means a payment made by the department for services provided which did not fully reimburse the client or provider.

X. "Unearned income" means income in the form of benefits such as TANF, workmen's compensation, social security, supplemental security income; child support, pensions, contributions, gifts, loans, and grants which does not meet the definition of earned income.

Y. "Waiting list" means a list of families who have applied for child care services during a period of lack of funding.

Z. "Working" means employment of any type, including self-employment. For TANF recipients, this includes work experience and/or community service or any other activity that meets the TANF work activity requirements.

[8.15.2.7 NMAC - Rp 8.15.2.7 NMAC, 11-01-02; A, 07-15-04]

8.15.2.9 PRIORITIES FOR ASSISTANCE: Any funds received by the department under the child care development fund and other sources are expended for child care assistance pursuant to the following priorities:

A. Priority one and priority one A: Clients receiving temporary assistance to needy families (TANF) benefits are considered priority one clients. Clients participating in the food stamp employment and training (E&T) program as determined and administered by the human services department (HSD) are considered priority

one A clients.

(1) Participation exemption: The human services department grants participation exemptions to TANF clients who cannot locate child care. The children, youth and families department is responsible for the verification of the TANF participant's inability to locate child care. Reasons for a participation exemption due to lack of child care are as follows:

(a) the unavailability of appropriate child care within a reasonable distance from the individual's home or work site, or;

(b) the unavailability or unsuitability of informal child care by a relative or under other arrangements, or;

(c) the unavailability of appropriate and affordable formal child care by a relative or under other arrangements.

(2) A person who applies for participation exemption for any and/or all of the above reasons is referred to the children, youth & families department training and technical assistance (T&TA) contractor for that area. The T&TA assists the client with location of child care. The final validation/verification of a client's inability to locate child care is determined by the child care services bureau supervisor in conjunction with his/her supervisor. A client who receives a participation exemption due to lack of child care is required to re-apply for the exemption every six months. If a person disagrees with the determination of their eligibility for a participation exemption, they may apply for a fair hearing with the human services department (HSD). HSD is responsible for providing notice of the approval and/or denial of a participation exemption.

B. Priority one B: Child care assistance for income eligible families whose income is at or below 100% of the federal poverty level. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority one B for children with special needs and for teen parents. If budget availability permits, the department reserves the right to transfer priority one B families whose income exceeds 100% of the federal poverty level but is at or below 200% of the federal poverty level to the priority four category.

C. Priority two: Child care assistance for a consecutive 12-month period for families transitioning off TANF. Clients must have received TANF for at least one (1) month in the past twelve (12) months in order to qualify for priority two. Only clients whose TANF cases are closed at least in part due to increased earnings or loss of earned income deductions or disregards are eligible for priority two. Priority two clients do not have to meet income eligibility requirements during their twelve (12) consecutive month period of eligibility

for priority two child care.

D. Priority three: No new families will be enrolled in priority three. This category will be eliminated through attrition as priority three families become ineligible for any reason including but not limited to: income exceeding 200% of the federal poverty level; failure to re-certify in a timely manner; and/or loss of employment which results in loss of benefits.

E. Priority four: Child care assistance for families whose income is above 100% of the federal poverty level but at or below 200% of the federal poverty level, adjusted annually in accordance with federal guidelines. These families are certified for a six month block of time subject to the availability of funds and renewable subject to the availability of funds. The department reserves the right to expand the eligibility requirement up to 200% of the federal poverty level based on budget availability. Families in any priority may be transferred to priority four if budget availability permits. If the number of eligible clients in this priority exceeds budget availability, the department may maintain a waiting list. The department prioritizes child care services within priority four for children with special needs and for teen parents.

F. CPS child care: In addition to these priorities, the department pays for protective services child care (CPS) as determined by the protective services [division] of the department.
[8.15.2.9 NMAC - Rp 8.15.2.9 NMAC, 11-01-02; A, 07-15-04]

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child’s enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the fourteen (14) calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1).

F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time).

G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type.

H. Monthly reimbursement rates

Licensed child care centers								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$467.84	\$352.60	\$350.88	\$264.45	\$233.92	\$176.30	\$116.96	\$88.15
Toddler	\$417.19	\$345.00	\$312.89	\$258.75	\$208.60	\$172.50	\$104.30	\$86.25
Pre-school	\$386.48	\$322.50	\$289.86	\$241.88	\$193.24	\$161.25	\$96.62	\$80.63
School age	\$337.11	\$311.75	\$252.83	\$233.81	\$168.56	\$155.88	\$84.28	\$77.94

Licensed group homes (capacity: 7-12)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$370.48	\$324.38	\$277.86	\$243.29	\$185.24	\$162.19	\$92.62	\$81.10
Toddler	\$335.40	\$320.00	\$251.55	\$240.00	\$167.70	\$160.00	\$83.85	\$80.00
Pre-school	\$329.55	\$315.00	\$247.16	\$236.25	\$164.78	\$157.50	\$82.39	\$78.75
School age	\$325.00	\$305.00	\$243.75	\$228.75	\$162.50	\$152.50	\$81.25	\$76.25
Licensed family homes (capacity: 6 or less)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$365.20	\$320.00	\$273.90	\$240.00	\$182.60	\$160.00	\$91.30	\$80.00
Toddler	\$325.08	\$315.00	\$243.81	\$236.25	\$162.54	\$157.50	\$81.27	\$78.75
Pre-school	\$324.17	\$310.00	\$243.13	\$232.50	\$162.09	\$155.00	\$81.04	\$77.50
School age	\$319.28	\$300.00	\$239.46	\$225.00	\$159.64	\$150.00	\$79.82	\$75.00
Registered homes and in-home child care								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-school	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, AIM HIGH status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider. Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties. All other providers receive the rural rate.

J. The department pays a differential rate to former gold and silver licensed providers and providers holding national accreditation status. Former gold and silver licensed providers receive an additional \$100.00 per month and \$33.00 per month, respectively, for full time care above the base reimbursement standard. In order to continue at these reimbursement rates a provider must meet and maintain former gold and silver licensing requirements. If a former gold or silver licensed provider fails to meet the former gold and silver licensing requirements this could result in the provider reimbursement reverting to a lower level of reimbursement. Providers holding national accreditation status receive an additional \$100.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. AIM HIGH is a voluntary quality child care improvement program that is open to all registered and licensed child care providers. The department pays a differential rate to providers achieving AIM HIGH levels as follows: level 2 at \$25.00 per month per child for full time care above the base reimbursement rate; level 3 at \$50.00 per month per child for full time care above the base reimbursement rate; level 4 at \$75.00 per month per child for full time care above the base reimbursement rate, and level 5 at \$100.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet current AIM HIGH level requirements. If an AIM HIGH provider fails to meet the current level requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L. The department pays a differential rate equivalent to ~~40%~~ 5, 10, or 15% of the applicable ~~full-time~~ full-time/part-time rate to providers who provide ~~full-time~~ care during non-traditional hours. ~~[Providers who provide part time care during non traditional hours will be paid a differential rate subject to the proration schedule delineated in Subsection D of 8.15.2.17 NMAC.]~~ Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
Weekend hours	5%	10%	15%

M. If a significant change occurs in the client's circumstances, (for example, an increase or decrease in income or a change in work schedule) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp 8.15.2.17 NMAC, 11-01-02; A, 03-01-03; A, 07-16-03; A, 08-26-03; A, 01-07-04; A, 07-15-04]

8.15.2.19 OVER PAYMENT AND RECOUPMENT:

If a provider receives payment for services for which he/she is not entitled, or a client receives benefits on behalf of their child for which he/she is not entitled, and this results in an overpayment, the child care worker will initiate recoupment procedures unless the ~~[director of the prevention and intervention division]~~ family services director deems otherwise in exceptional circumstances. The client or provider must repay the amount of the overpayment to the department within 30 calendar days of notification, unless the department determines that the amount is so large that it cannot be paid in one lump sum. In this case, the department may allow the client or provider to repay the amount over a payment period, usually not to exceed four months. The department arranges with the client or provider to make regular payments over the agreed-upon payment period or establishes a schedule of deductions from future payments issued over the agreed-upon payment period. Failure to make regular payments may result in sanctions including termination of benefits and/or referral of the account to a collection agency and/or legal action.

[8.15.2.19 NMAC - Rp 8.15.2.19 NMAC, 11-01-02; A, 07-15-04]

8.15.2.22 FAIR HEARINGS:

Clients who have been denied benefits, whose benefits have been reduced, suspended, or terminated, or who have been sanctioned or disqualified from the program, or

providers who have been sanctioned, disqualified from the program, had assistance payments suspended or terminated, or from whom a payment recoupment is being sought may request a fair hearing. The request for a fair hearing must be made in writing within 30 calendar days from the date the department took the adverse action affecting the claimant's benefits.

A. The department reviews the request for hearing and determines if the matter can be resolved without proceeding to a fair hearing. If the matter cannot be resolved without a fair hearing, the department conducts the fair hearing within 60 calendar days of receipt of the letter requesting the hearing and notifies the claimant of the date of the hearing no less than 14 calendar days prior to the hearing. The location of the hearing must be easily accessible to the claimant. Conducting the fair hearing by telephone is permitted. The claimant may request a change of date, provided that the 60 calendar day time limit is not exceeded.

B. The department appoints a hearing officer. The department is not responsible or liable for a claimant's travel costs, legal costs, or any other costs associated with the claimant's request for a fair hearing.

C. The hearing officer reviews all of the relevant information and makes a final decision within 30 calendar days of the hearing. The final decision is binding upon the department and claimant and implemented within 14 calendar days of the hearing decision. The claimant is notified in writing of the hearing officer's decision within 14 calendar days of the hearing decision.

D. At the claimant's option the case may remain open at the same benefit level until disposition. If the decision is in favor of the department, the claimant is responsible for repayment of all monies received to which the claimant was not entitled, unless the hearing decision provides otherwise or the ~~[director of the prevention and intervention division]~~ family services director authorizes otherwise in exceptional circumstances. The fair hearing process is not intended as a means to extend the time for receipt of child care assistance payments to which the recipient is not otherwise entitled, and therefore exceptional circumstances must be explicitly stated.

E. Child care assistance workers determine eligibility for all child care assistance programs except for TANF and E&T. Eligibility for TANF and food stamp E&T program is determined by the New Mexico human services department. If TANF and E&T benefits are modified or terminated by HSD, then the client applies for a fair hearing to HSD.

[8.15.2.22 NMAC - Rp 8.15.2.22 NMAC,

11-01-02; A, 07-15-04]

8.15.2.23 COMPLAINTS: Clients or providers who are dissatisfied with the services provided by the department may express their complaints orally or in writing to the local field office, the central office, the ~~[division]~~ director's office or the office of the department secretary. The department's toll free number is posted in each office and made available to clients and providers upon request. The local supervisor, bureau chief, ~~[division]~~ director or secretary responds to complaints by clients or providers orally or in writing as is deemed appropriate in each case.

[8.15.2.23 NMAC - Rp 8.15.2.23 NMAC, 11-01-02; A, 07-15-04]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

8.10.8 NMAC, Permanency Planning, is repealed effective July 15, 2004 and replaced by 8.10.8 NMAC, Permanency Planning, effective July 15, 2004.

8.27.2 NMAC, Foster Parenting, is repealed effective July 15, 2004 and replaced by 8.27.2 NMAC, Foster Parenting, effective July 15, 2004.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 10 CHILD PROTECTIVE SERVICES PART 8 PERMANENCY PLANNING

8.10.8.1 ISSUING AGENCY: Children, Youth and Families Department, Protective Services Division.
[8.10.8.1 NMAC - Rp, 8.10.8.1 NMAC, 07/15/04]

8.10.8.2 SCOPE: Protective services division employees and the general public.
[8.10.8.2 NMAC - Rp, 8.10.8.2 NMAC, 07/15/04]

8.10.8.3 STATUTORY AUTHORITY: New Mexico Children's Code 32A-4-1 et. seq. NMSA (Repl. 1999).
[8.10.8.3 NMAC - Rp, 8.10.8.3 NMAC, 07/15/04]

8.10.8.4 DURATION:

Permanent.

[8.10.8.4 NMAC - Rp, 8.10.8.4 NMAC, 07/15/04]

8.10.8.5 EFFECTIVE DATE:

July 15, 2004, unless a later date is cited at the end of a section.

[8.10.8.5 NMAC - Rp, 8.10.8.5 NMAC, 07/15/04]

8.10.8.6 OBJECTIVE: To establish parameters for the provision of permanency planning services to children in the custody of the department.

[8.10.8.6 NMAC - Rp, 8.10.8.6 NMAC, 07/15/04]

8.10.8.7 DEFINITIONS:

A. The “assessment plan” is the process of collaborating with the clients to compile information to identify the client’s strengths, needs, and issues that need to be addressed in order to develop a service plan.

B. “Children’s maintenance accounts” are accounts established when a child receives specific monetary benefits, such as social security, SSI child support, and other benefits. Resources received on behalf of the child are used to reimburse CYFD for the child’s care and to meet the needs of the child.

C. “Close proximity” means a location physically close enough to facilitate family visiting, consistent with the best interest and special needs of the child.

D. “Conditionally safe” is the term used to describe the CYFD’s assessment based upon available information that, when persons or services have been put in place to protect the child, or factors detrimental to the child have been temporarily eliminated, the child’s immediate circumstance or environment is not threatening to the child.

E. “Congregate care settings” are facilities that are licensed to provide 24 hour a day care for children in a group setting.

F. “Crisis shelter group care” is a facility licensed to provide 24 hour, seven day a week emergency, short term care to children between the ages of birth to 18.

G. “Daily supervision” provides 24 hour a day supervision for a child when the child’s usual caretaker is not able to provide such care. It is a program to sustain the foster family by providing time-limited and temporary relief from the ongoing responsibility of daily care.

H. “CYFD” means the New Mexico children, youth and families department.

I. “CYFD licensed family foster homes” are homes licensed by CYFD to provide care to a child not related

to the foster parents.

J. “Division” means the protective services division of CYFD.

K. An “emergency shelter” is a facility licensed to provide 24 hour a day, seven days per week care to children age 12 and over who are in need of temporary shelter.

L. The “fifth degree of consanguinity” includes brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, sister-in-law, and brother-in-law, as well as documented godparents.

M. A “group home” is a residential child care facility licensed children age 12 years old and older. Group homes are not secured in the manner that residential treatment facilities are secured.

N. An “Indian child” is any unmarried person who is under age 18 and either (1) is a member of an Indian tribe or (2) is eligible for membership and is the biological child of a member of an Indian tribe.

O. “Indian foster family homes” are foster family homes licensed or approved by an Indian tribe.

P. An “initial relative assessment” is an in-home assessment of a relative completed by the child’s worker to determine suitability for placement.

Q. The “interstate compacts” are binding agreements among states which allow homestudies and certifications of out-of-state placements, which allows CYFD to place children across state lines.

R. “Least restrictive” means that the placement is as home-like as possible considering the needs of the child.

S. “Maintenance payments” are the reimbursements made to substitute care providers and designed to meet the child’s ongoing needs. Maintenance payments are not considered income.

T. The “needs” of the child include safety, food, shelter, and emotional well-being.

U. “Permanency planning” is the systematic process of carrying out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships.

V. The “permanency plan” specifies where and with whom the child shall live and the proposed legal relationship between the child and the permanent caretaker(s).

W. A “relative” is someone connected to another person by blood or marriage within the fifth degree of consanguinity.

X. “Relative foster home” is a home licensed by CYFD to provide foster care to a child related to the foster parent(s) within the fifth degree of consanguinity or a documented godchild.

Y. “Safe” is the term used to describe CYFD’s assessment based upon available information that a child’s immediate circumstance or environment is free from persons and/or situations that have been identified as possible causes of harm to the child.

Z. “Sibling continuity” is the placement of siblings together or, when placement together is clinically contraindicated, sibling continuity involves supporting the relationship among the siblings through visitation.

AA. “Substitute care” is any placement outside the child’s home.

BB. “Early and periodic screening, diagnosis and treatment (EPSDT)”, is a medicaid program designed to provide comprehensive and preventive health care services to medicaid-eligible children under age 21.

CC. “Treatment foster care home” is a foster home licensed by a child placement agency to provide intensive therapeutic support, intervention and treatment for a child who would otherwise require a more restrictive placement.

DD. “Treatment plan” is a plan developed by CYFD in cooperation with clients, based on the information collected and which identifies the specific changes in behaviors and/or circumstances that are required for the child to achieve permanency.

EE. “Trial home visit” is the period of time, not to exceed 6 months, in which a child with a plan of reunification resides with the parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

FF. “Notice of privacy practices” means the written or electronic notice of CYFD’s uses and disclosures of protected health information and of the individual’s rights and CYFD’s legal duties with respect to protected health information.

GG. “Protected health information” means individually identifiable health information maintained by CYFD for purposes of providing case management services.

HH. “Fictive kin” is a person not related by birth or marriage who has an emotionally significant relationship with a child.

II. “Level 1 foster care” is the basic level of foster care services; every child entering foster care is in level 1.

JJ. “Level 2 foster care” is for children requiring a higher level of

care, structure or supervision than would be required for a child of similar age or development.

KK. "Level 3 foster care" is for children requiring a significantly and consistently high level of care and is generally an alternative to institutional care.

LL. "Child protective services child care" is provided by CYFD as a component part of a treatment plan for a child whose family is receiving services as a result of a referral for abuse or neglect and is not based on income eligibility.

MM. "Best interest placement process" is the consideration of all the elements that are required to best meet the needs of the child in out of home care.

NN. "Concurrent plan" means a second treatment plan in addition to the primary treatment plan for children who have a poor prognosis for reunification.

OO. "Individualized adoption plan" is an individualized and specific recruitment plan developed by the adoption consultant and approved by the ART for children who have a plan of adoption.

PP. "Adoption resource team" is a team of two people, one a CYFD employee and one under contract with CYFD, who are responsible for reviewing, amending, and approving the individual adoption plans for children with a plan of adoption, to ensure timely movement toward adoption and permanence.

[8.10.8.7 NMAC - Rp, 8.10.8.7 NMAC, 07/15/04]

8.10.8.8 PURPOSE OF PERMANENCY PLANNING SERVICES:

The purpose of permanency planning services is to systematically carry out, within a time-limited period, a set of goal directed activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish lifetime relationships.

A. Permanency planning is conducted for all children in the custody of CYFD.

B. CYFD establishes one of the following permanency plans for each child in CYFD custody:

(1) Reunification: The goal of a plan of reunification is to safely reunify the child to the home of the parent and/or legal guardian.

(2) Placement with a fit and willing relative: The goal of a plan of placement with a fit and willing relative is to establish a court sanctioned relationship between the child and the child's relative in order to maintain family relationships to the extent possible, consistent with the best interests of the child. The placement should preferably result in adoption or guardian-

ship of the child by the fit and willing relative.

(3) Adoption: The goal of a plan of adoption is to judicially terminate the rights, privileges and duties as between the child and the biological parent(s), and to judicially establish in another family such rights, privileges and duties as between a child and heir, and the adoptive parent(s).

(4) Permanent guardianship: The goal of a plan of permanent guardianship is to establish a court-sanctioned arrangement which vests in a guardian all rights and responsibilities of a parent without terminating the rights of the parent as set forth by the New Mexico Children's Code, sections 32A-4-31 and 32A-4-32.

(5) Planned permanent living arrangement: The goal of a planned permanent living arrangement is to establish a court sanctioned arrangement to provide physical and emotional permanency for the child when the court determines that this is the most appropriate permanency plan for the child after considering reunification, adoption and permanent guardianship.

C. A permanency plan is established for every child at the assessment planning conference.

(1) A plan of reunification is inappropriate in most cases involving abandonment, extreme history of abuse/neglect of the child or a sibling or when the parent has caused great bodily injury or death to a child or the child's sibling.

(2) At a minimum, the appropriateness of the permanency plan is assessed for its relevancy at every established CYFD conference, staffing and judicial review. Permanency plans may be changed to meet the needs of the child.

(3) The appropriateness of the permanency plan will be reviewed prior to a permanency hearing.

D. During the time that reasonable efforts are being made to reunify the child and family, CYFD may also concurrently make reasonable efforts to finalize one of the other permanency plans (adoption, permanent guardianship, permanent placement with a fit and willing relative, or planned permanent living arrangement) for the child.

E. CYFD seeks to terminate parental rights and establish and/or modify a permanency plan for children in the following circumstances:

(1) If a child is in substitute care for 15 of the most recent 22 months, CYFD files a motion to terminate parental rights by the end of the 15th month, unless the child is being cared for by a relative, or CYFD has documented compelling reasons for not filing, or CYFD has not provided to the family those services deemed necessary for the safe return of the child within the time period in the case plan. CYFD calculates

the 15 of the most recent 22 month period from the date the child entered foster care, uses a cumulative method of calculation when a child experiences multiple exits from and entries into foster care during the 22 month period, and excludes trial home visits and runaway episodes in calculating the 15 months. If there are compelling reasons for not seeking to terminate parental rights, those reasons must be documented in the case plan. For purposes of determining the applicable time to file such a motion, the child is considered to have entered foster care on the earlier of:

(a) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(b) the date that is 60 days after the date on which the child is removed from the home.

(2) If the child is an abandoned infant, CYFD seeks to terminate parental rights concurrent with the judicial determination of abandonment.

(3) If the parent or custodian has been convicted of murder or voluntary manslaughter of another child of the parent, or of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter, or convicted of a felony assault that results in serious bodily injury to the child or another child of the parent, CYFD seeks to terminate parental rights within 60 days of a judicial determination that reasonable efforts to reunify the child and parent are not required.

[8.10.8.8 NMAC - Rp, 8.10.8.8 NMAC, 07/15/04]

8.10.8.9 ELIGIBILITY: Any child under 18 years of age who is in the custody of CYFD through a court order or voluntary placement agreement, is eligible for permanency planning services without regard to family income.

[8.10.8.9 NMAC - Rp, 8.10.8.9 NMAC, 07/15/04]

8.10.8.10 WAITING LIST: There is no waiting list for permanency planning services.

[8.10.8.10 NMAC - Rp, 8.10.8.10 NMAC, 07/15/04]

8.10.8.11 SUBSTITUTE CARE: The investigation worker, in consultation with the supervisor, assesses whether substitute care is required to protect the child. The safety of the child is the paramount consideration when assessing the need for out-of-home placement. If, after the safety assessment, CYFD finds that placement is necessary:

A. CYFD conducts an assessment of the needs and strengths of the child and family to determine a placement

that can best ensure the safety of the child and meet those needs.

(1) CYFD completes a safety assessment prior to any removal or return home.

(2) The worker may recommend a child remain in his/her own home if the Safety Assessment indicates that the child is safe or conditionally safe and a safety plan is in place that safeguards the child. Reasonable efforts will be made to prevent out-of-home placement.

B. CYFD selects a best interest placement for the child based on the needs and strengths of the child in relation to the available placement options.

C. When substitute care is required to protect the child, the out-of-home placement meets the following criteria:

(1) Least restrictive: Children are placed in the least restrictive setting consistent with the assessment of their individual needs.

(2) Close proximity: Children are placed in close proximity to their home if their safety can be assured.

(3) Sibling continuity: Children are placed in a manner that encourages the development and/or maintenance of an appropriate relationship with their siblings.

(4) Indian child placement: CYFD makes a best interest placement for an Indian child in accordance with the placement preferences of the Indian Child Welfare Act (I.C.W.A.).

(5) Relatives: CYFD considers placement with relatives as a preference when making substitute care decisions. CYFD considers fictive kin for placement if appropriate for best interest placement consideration.

[8.10.8.11 NMAC - Rp, 8.10.8.11 NMAC, 07/15/04]

8.10.8.12 PRE-PLACEMENT

ACTIVITIES: CYFD conducts pre-placement activities to assess the needs and strengths of the child and family and assist in determining placement and secure appropriate funding. If a child's circumstances require an emergency placement, then all the pre-placement activities are completed prior to adjudication.

[8.10.8.12 NMAC - Rp, 8.10.8.12 NMAC, 07/15/04]

8.10.8.13 PLACEMENT:

CYFD provides for a variety of placement types to meet the unique qualities and needs of children in custody requiring out of home care. In order of preference, a child shall be placed with a fit and willing relative caregiver, a foster home, or in a group setting. Out-of-home care in a family environment is preferred to out-of-home care in an institution and/or congregate care setting. Other

criteria are stated in Subsection C of 8.10.8.11 NMAC above.

A. The child is considered to have entered foster care on the earlier of:

(1) the date of the first judicial finding that the child has been subjected to child abuse or neglect; or

(2) the date that is 60 days after the date on which the child is removed from the home.

B. Children in CYFD custody are placed in licensed/certified homes or facilities or approved relative homes.

C. CYFD determines the placement of the child.

(1) CYFD may place children directly into homes or facilities such as:

(a) approved relative home in which an initial relative assessment has been completed;

(b) CYFD licensed relative foster home;

(c) CYFD foster home; or

(d) crisis shelter group care or an emergency shelter.

(2) CYFD complies with the requirements of human services department regulations, department of health regulations, and other CYFD division regulations to access such placement types as:

(a) treatment foster care;

(b) group home; or

(c) residential treatment centers.

(3) For children in custody who are in crisis due to severe emotional or psychiatric disorders, CYFD seeks evaluations and treatment in psychiatric hospitals which bill medicaid for such services.

(4) CYFD gives preference to an adult relative over a non-relative caregiver when determining the initial placement and any subsequent change in placement for a child, provided that the relative caregiver meets all New Mexico foster parenting licensing standards and the placement is able to meet the safety and treatment needs of the child.

(5) The placement of a child into foster care shall not be delayed or denied on the basis of the race, color, or national origin of the foster parent, or the child involved.

D. CYFD provides notification of change of placement as required by the New Mexico Children's Code, Sections 32A-4-14.

[8.10.8.13 NMAC - Rp, 8.10.8.13 NMAC, 07/15/04]

8.10.8.14 OUT-OF-STATE

PLACEMENTS: Children in CYFD custody are not placed in out-of-state, non-relative foster homes unless the plan is to reunite the child with the natural parents or relatives who reside in same state where placement is planned.

A. The out-of-state place-

ment of a child in CYFD custody complies with the interstate compact on the placement of children.

B. CYFD has no authority to license foster home in other states.

C. The division director is notified of any out-of-state placement of a child in CYFD custody in a residential treatment center or psychiatric and/or medical facility.

D. CYFD visits each child who is in an out-of-state placement in his or her placement at least annually and submits a report of the visit. The treatment worker also makes arrangements for a case worker on the staff of the state agency for the state in which the child has been placed to visit the child and submit a report of the visit at least once every 3 months.

[8.10.8.14 NMAC - Rp, 8.10.8.14 NMAC, 07/15/04]

8.10.8.15 FINANCIAL RESPONSIBILITY FOR CARE:

While the child is in CYFD custody and until parental rights have been terminated, the child's parents continue to be financially responsible for the child. CYFD establishes a children's maintenance account for any child in CYFD custody who receives monetary benefits. Resources received on behalf of the child are used to reimburse CYFD for the child's care and to meet the needs of the child.

[8.10.8.15 NMAC - Rp, 8.10.8.15 NMAC, 07/15/04]

8.10.8.16 RESPONSIBILITY FOR MEDICAL CARE:

If parental support is not available, CYFD seeks to obtain other medical coverage or, if all other possibilities are exhausted, to qualify the child for medicaid through SSI, title IV-E or child welfare services medicaid. If the child is not eligible under medicaid, the child's medical needs are covered through title XX funds.

[8.10.8.16 NMAC - Rp, 8.10.8.16 NMAC, 07/15/04]

8.10.8.17 ELIGIBILITY DETERMINATIONS:

CYFD determines funding eligibility for each child in substitute care.

[8.10.8.17 NMAC - Rp, 8.10.8.17 NMAC, 07/15/04]

8.10.8.18 VOLUNTARY PLACEMENTS:

A. When the parent/guardian/custodian is cooperative and CYFD assesses it to be in the best interest of the child, CYFD may accept legal custody of a child placed voluntarily with CYFD through a written agreement.

B. Voluntary placement agreements are allowable up to 90 days. A

child may remain in voluntary placement up to an additional 90 days upon order of the children's court after the filing of a petition for extension of the voluntary placement, a hearing and a finding that the additional placement time is in the best interest of the child. A child may not remain in voluntary in excess of 180 days in a 365 day time period.

C. All voluntary placement agreements are approved by the division director or his/her designee.

D. If the parent/guardian/custodian requests CYFD to return the child prior to the termination of the voluntary placement agreement, the child is returned within 72 hours of the request unless an abuse or neglect petition is filed concerning that child, and the court enters an order finding abuse or neglect, prior to the expiration of the 72 hours. The request may be written or oral; the social worker documents oral requests in the file. CYFD assesses the return of the child utilizing the SDM tools prior to returning the child to the physical custody of the parent or guardian and makes a determination about whether or not to file an abuse or neglect petition.

E. CYFD develops service plans with all families entering into a voluntary placement agreement.

[8.10.8.18 NMAC - Rp, 8.10.8.18 NMAC, 07/15/04]

8.10.8.19 RELINQUISHMENT OF PARENTAL RIGHTS TO THE DEPARTMENT: No parent may relinquish parental rights to CYFD without CYFD's consent.

[8.10.8.19 NMAC - Rp, 8.10.8.19 NMAC, 07/15/04]

8.10.8.20 TREATMENT PLANS: CYFD develops two types of treatment plans during the time a case remains open for services.

A. CYFD develops an assessment plan at the assessment planning conference.

B. CYFD develops a treatment plan prior to the adjudication, and reviews and modifies the plan as required at all subsequent judicial reviews and permanency hearings.

C. The assessment plan and treatment plan must describe services offered and provided to prevent removal from the home, reunify the family and/or to finalize a placement when reunification is not, or is no longer, the permanency plan goal.

D. CYFD completes a concurrent plan assessment within on every child within 30 days of entry into CYFD custody.

E. CYFD develops a con-

current plan when it is indicated by the concurrent plan assessment. Any of the approved permanency plan goals may be appropriate as a permanency goal for the concurrent plan. The concurrent plan is implemented concurrently with the treatment plan and becomes the treatment plan whenever the court determines this is in the child's best interests.

F. If a child is placed a substantial distance from home, the treatment plan will set forth the reasons why this placement is in the child's best interest

G. CYFD evaluates the status of each child within six months of the conclusion of the permanency hearing or, if a motion has been filed for termination of parental rights or permanent guardianship, within six months of the decision on that motion, and re-evaluates the status every six months thereafter so long as the child remains in custody. The evaluation includes a determination of the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the treatment plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care. The evaluation also projects a likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.

H. CYFD provides the parent or guardian, the child if age 14 or older, and the guardian ad litem if the child is in the state's custody, with the notice of privacy practices at the first contact to develop treatment services. CYFD documents the acknowledgement of receipt and the good faith efforts to obtain the acknowledgement and reasons why it was not obtained.

[8.10.8.20 NMAC - Rp, 8.10.8.20 NMAC, 07/15/04]

8.10.8.21 SERVICES TO CHILDREN AND FAMILIES

A. CYFD provides or arranges services for the child as needed while the child is in custody, including but not limited to:

- (1) educational services;
- (2) medical services;
- (3) psychological services;
- (4) treatment and habilitation services; and
- (5) daily supervision.

B. If the child's permanency plan is reunification, CYFD provides or arranges for services for the child's family to effect the changes necessary to reunify the family.

C. For children with a permanency plan of reunification, CYFD utilizes the safety reassessment, risk reassessment and family needs and strengths

reassessment tools to determine the need for continuation of services to the child's family and to assess case progress.

D. CYFD may seek the services of the federal parent locator service to search for absent parents at any point to facilitate a permanency plan.

E. CYFD provides services to children age 16 and older to assist transition to independent living.

F. When CYFD seeks to terminate parental rights, CYFD concurrently undertakes to identify, recruit, process, and approve a qualified family for adoption of a child.

G. CYFD provides or arranges for services for the parents or guardians of a child in CYFD custody as needed to address the safety and risk factors that resulted in the abuse or neglect petition being filed and the child placed in substitute care.

(1) CYFD makes active efforts to locate and engage both the child's mother and father in treatment planning and tailors the treatment plan to the individual needs and strengths of each parent or guardian.

(2) CYFD has at least monthly contact with the parent or guardian of a child in CYFD custody to review the parent's progress in completing the terms of the treatment plan, to provide direction and feedback on the parent/child visits, and to provide information about the child's progress and status in foster care.

(3) The monthly contact with the parents or guardians includes both the mother and the father and is a face to face visit unless circumstances do not allow it and those circumstances are approved by the supervisor.

(4) Any exceptions to meetings with parents are documented in the record. [8.10.8.21 NMAC - Rp, 8.10.8.20 NMAC, 07/15/04]

8.10.8.22 FAMILY VISITATION: CYFD arranges for visitation between the child in substitute care and the child's parents and siblings. The conditions of visitation are determined based upon the child's safety and best interest.

A. A child may be returned to the parent or guardian on a trial home visit while the child remains in the legal custody of CYFD. If a trial home visit exceeds six months in duration, or exceeds a longer time period deemed appropriate by the court, and the child is subsequently returned to foster care, the placement is considered a new placement and procedures must be followed to newly establish title IV-E eligibility.

B. CYFD visits each child in CYFD custody at least monthly in the child's placement and assesses the placement for appropriateness in meeting the

child's needs and safety.

C. CYFD encourages and facilitates visitation between children in custody and their siblings, relatives and significant others.

[8.10.8.22 NMAC - Rp, 8.10.8.22 NMAC, 07/15/04]

8.10.8.23 MAINTENANCE PAYMENTS TO SUBSTITUTE CARE PROVIDERS

A. Substitute care providers are reimbursed for the care provided to children at rates established by the state legislature.

B. To be honored, request from substitute care providers for reimbursements for pre-approved purchases must be submitted within 45 days of the expenditure.

C. CYFD is not liable and will not reimburse any person for any loss or property damage, real or personal, in excess of \$25,000, that is shown to be caused by a child in substitute care.

D. A foster home or other facility must meet all relevant licensing/certification standards to be eligible to receive federal IV-E funding.

E. CYFD assesses every child within 30 days of entry into substitute care for the level of care needs and makes appropriate placement based on that assessment.

[8.10.8.23 NMAC - Rp, 8.10.8.23 NMAC, 07/15/04]

8.10.8.24 STAFFINGS AND CONFERENCES:

CYFD utilizes staffings and conferences to internally review and develop plans and review the permanency plan for each child in custody.

[8.10.8.24 NMAC - Rp, 8.10.8.24 NMAC, 07/15/04]

8.10.8.25 CITIZEN REVIEW BOARD:

CYFD refers each child in custody to the citizen review board as required by New Mexico Children's Code, Sections 32A-4-25.1 and 32A-8-6. The citizen review board provides the foster parent(s) of a child and any pre-adoptive parent(s) or relative(s) providing care for the child with timely notice of and an opportunity to be heard before the citizen review board. The notice and opportunity to be heard do not include the right to standing as a party in the case.

[8.10.8.25 NMAC - Rp, 8.10.8.25 NMAC, 07/15/04]

8.10.8.26 TERMINATION OF CUSTODY:

CYFD's custody of a child terminates under the following circumstances:

A. the court dismisses or terminates CYFD's custody of a child;

B. a voluntary placement agreement expires;

C. court ordered custody of the child expires;

D. the child reaches the age of majority; or

E. a child in CYFD's custody marries or joins the armed forces.

[8.10.8.26 NMAC - Rp, 8.10.8.26 NMAC, 07/15/04]

8.10.8.27 INTERSTATE COMPACTS:

CYFD complies with the provisions of the interstate compacts on all eligible placements.

[8.10.8.27 NMAC - Rp, 8.10.8.27 NMAC, 07/15/04]

8.10.8.28 DOCUMENTATION

A. CYFD documents case work activities concerning services provided to children receiving permanency planning services.

B. The records maintained by CYFD are confidential and may only be released in accordance with applicable law.

C. CYFD documents acknowledgement of receipt of the notice of privacy practices or documents the good faith efforts made to attempt to obtain acknowledgement of receipt of the notice of privacy practices and the reasons why the acknowledgment was not obtained. In the case of notice to GaLs, a certificate of service signed by CYFD's attorney shall constitute the requisite documentation.

[8.10.8.28 NMAC - Rp, 8.10.8.28 NMAC, 07/15/04]

8.10.8.29 FOSTER CARE GOALS

A. CYFD's foster care goals for the maximum number of children who will remain in foster care after having been in foster care for a period in excess of twenty-four months, are:

(1) 450 for federal fiscal year 2004

(2) 400 for federal fiscal year 2005

B. CYFD will take the following steps to reduce the number of children who will remain in foster care after having been in foster care for a period in excess of twenty-four months, and to achieve the goals set forth in Paragraph (A):

(1) When it becomes apparent that reunification will not be the permanency plan for the child, CYFD conducts a review at which another permanency plan option is selected, and steps are identified to expedite it. If the permanency plan is adoption, CYFD refers the child's case to the adoption resource team and develops an individual adoption plan. CYFD first considers relatives and foster parents, and then other avenues for recruitment to identify

potential adoptive homes. CYFD identifies what recruitment activities can be done in the interim before the child is freed for adoption.

(2) CYFD implements the individual adoption plan which includes targeted recruitment activities. CYFD attempts to identify potential adoptive homes for best interest adoption placement and assesses the current foster parent(s) as a potential adoptive home. CYFD reviews the progress of completing the individual adoption plan with the ART every 60 days until the child is placed in a potential adoptive home.

[8.10.8.29 NMAC - Rp, 8.10.8.29 NMAC, 07/15/04]

8.10.8.30 CHILD PROTECTIVE SERVICES CHILD CARE

A. CYFD provides child protective services child care as one part of a treatment plan for children and families receiving services to address child maltreatment safety and risk factors.

B. The purpose of protective services child care are:

(1) to enable parents/guardians to participate in activities which are part of the comprehensive treatment plan;

(2) to enable foster parents to maintain employment, obtain job training and/or attend educational programs while children are in placement in the home;

(3) to provide child care as crisis intervention for those families who lack other resources, are at risk of child maltreatment, and unable to provide adequate care for their child.

C. CYFD provides protective services child care:

(1) without regard to income eligibility;

(2) depending on the assessment of need for the child and family or foster family; and

(3) as appropriate and to maintain stability of a placement.

D. CYFD arranges for child protective services child care by providers who meet the requirements established by and who are licensed or certified by the CYFD child care services bureau.

E. The child's worker determines an appropriate child care provider in cooperation with the child's family and/or foster family.

F. CYFD follows the service standards and payment rates for child care that are established by the CYFD child care services bureau.

G. CYFD arranges child protective services child care from any of the following approved provider types:

(1) licensed family child care;

(2) certified family child care;

and

(3) licensed child care center.
[8.10.8.30 NMAC - N, 07/15/04]

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 27 FOSTER CARE
PART 2 FOSTER PARENT-
ING**

8.27.2.1 ISSUING AGENCY: Children, Youth and Families Department, Protective Services Division
[8.27.2.1 NMAC - Rp, 8.27.2.1 NMAC, 07/15/04]

8.27.2.2 SCOPE: Protective services division employees and general public.
[8.27.2.2 NMAC - Rp, 8.27.2.2 NMAC, 07/15/04]

8.27.2.3 STATUTORY AUTHORITY: Authority to Conduct Social Services 9-8-13 A(3) NMSA 1978; New Mexico Children's Code 32-1-1 et. Seq. NMSA 1978 (Repl. 1999)
[8.27.2.3 NMAC - Rp, 8.27.2.3 NMAC, 07/15/04]

8.27.2.4 DURATION: Permanent
[8.27.2.4 NMAC - Rp, 8.27.2.4 NMAC, 07/15/04]

8.27.2.5 EFFECTIVE DATE: July 15, 2004, unless a later date is cited at the end of a section.
[8.27.2.5 NMAC - Rp, 8.27.2.5 NMAC, 07/15/04]

8.27.2.6 OBJECTIVE: To establish standards for the recruitment, training, screening, evaluation, licensing and retention of foster parents consistent with the licensing standards for foster care for children in the custody of CYFD.
[8.27.2.6 NMAC - Rp, 8.27.2.6 NMAC, 07/15/04]

8.27.2.7 DEFINITIONS:

A. An "abuse/neglect check" is the check of the information management system to determine if there has been any previous involvement with CYFD.

B. An "administrative hearing" is a formal process, where the client has an opportunity to present evidence to an impartial hearing officer.

C. An "administrative review" is an informal process. It may include an informal conference or may

include only a record review. The administrative review process does not create any substantive rights for the client.

D. The "case management team" consists of the parents, the child (if age appropriate), the social worker, the supervisor, service providers, foster parents and any significant others in the child's and/or family's life.

E. A "criminal records check" includes local, state and federal clearances.

F. "CYFD" means the New Mexico children, youth and families department.

G. The "fifth degree of consanguinity" includes brother, sister, grandparents, aunt, uncle, niece, nephew, first cousin, mother-in-law, father-in-law, sister-in-law, and brother-in-law, as well as documented godparents.

H. The "homestudy report" is the written assessment of the applicant family.

I. An "initial relative assessment" is an in-home assessment of a relative completed by the child's worker to determine suitability for placement.

J. A "medical statement" is the written summary concerning an individual's emotional and physical health and the documentation of the existence of any medical/psychological conditions that impact the individual's ability to provide care to a child.

K. A "surrogate parent" stands in for the parent of a student to protect the student's educational rights, and acts as the student's advocate in the educational decision-making process.

L. "Fictive kin" is a person not related by birth or marriage who has an emotionally significant relationship with a child.
[8.27.2.7 NMAC - Rp, 8.27.2.7 NMAC, 07/15/04]

8.27.2.8 FOSTER CARE LICENSING STANDARDS: Services provided to foster parents and/or services provided by foster parents to children in the custody of CYFD are in accordance with the foster care licensing standards.

A. The definitions contained in the foster care licensing standards apply to these policies.

B. These foster care licensing standards are reviewed by the protective services division annually.
[8.27.2.8 NMAC - Rp, 8.27.2.8 NMAC, 07/15/04]

8.27.2.9 ELIGIBILITY: Any adult at least 18 years of age who is a legal resident of the country and who resides in New Mexico can apply to be a foster parent.
[8.27.2.9 NMAC - Rp, 8.27.2.9 NMAC,

07/15/04]

8.27.2.10 RECRUITMENT: CYFD recruits foster parents in all parts of the state, and makes attempts to identify and locate relatives for consideration of placement, with emphasis on the needs of the children requiring out-of-home care.
[8.27.2.10 NMAC - Rp, 8.27.2.10 NMAC, 07/15/04]

8.27.2.11 INQUIRIES: CYFD responds to inquires from individuals interested in becoming foster parents.
[8.27.2.11 NMAC - Rp, 8.27.2.11 NMAC, 07/15/04]

8.27.2.12 CYFD EMPLOYEES AS FOSTER PARENTS: CYFD employees who meet licensing requirements and do not have a conflict of interest may serve as foster parents.
[8.27.2.12 NMAC - Rp, 8.27.2.12 NMAC, 07/15/04]

8.27.2.13 LICENSING PROCESS: CYFD screens, trains, studies, approves and licenses foster homes which accept children who are in CYFD custody.
[8.27.2.13 NMAC - Rp, 8.27.2.13 NMAC, 07/15/04]

8.27.2.14 APPLICATION: Individuals interested in becoming a foster parent complete the application provided by CYFD.
[8.27.2.14 NMAC - Rp, 8.27.2.14 NMAC, 07/15/04]

8.27.2.15 TRAINING

A. Applicants meet the preservice training requirements CYFD establishes.

B. Foster parents meet the annual training requirements established by CYFD.
[8.27.2.15 NMAC - Rp, 8.27.2.15 NMAC, 07/15/04]

8.27.2.16 STATE AND FEDERAL CRIMINAL RECORDS CHECKS:

A. Criminal records checks (CRC) are required for all persons caring for children. The applicant provides CRC fingerprint cards to CYFD, including for all adults residing in the applicant's home. A request for background checks must be submitted to CYFD as soon as possible in the home study process.

B. An applicant shall not be eligible for a foster care license, or to provide foster care for a child, and CYFD shall be in violation of this regulation, if the applicant is allowed to continue to provide foster care services after being notified that a federal background check reveals information that would disqualify an individual

from providing services to children. Final approval shall not be granted in any case in which a CRC reveals:

(1) a felony conviction for child abuse or neglect;

(2) a felony conviction for spousal abuse;

(3) a felony conviction for a crime against children (including child pornography);

(4) a conviction for any crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, or

(5) a felony conviction within the past 5 years, of a crime of physical assault, battery, or a drug-related offense.

C. An applicant shall not be eligible for a foster care license, or to provide foster care for a child, and CYFD shall be in violation of this regulation, if the applicant is allowed to continue to provide foster care services after being notified that a federal background check reveals information that would disqualify an individual from providing services to children.

D. For any applicant who has received state and federal background clearance through another approved foster parent licensing agency or organization within six months of an application with CYFD, CYFD may elect to forego an additional federal background check unless CYFD believes there is cause to request it. [8.27.2.16 NMAC - Rp, 8.27.2.16 NMAC, 07/15/04]

8.27.2.17 ABUSE/NEGLECT CHECK

A. A review of the CYFD management information system for abuse and neglect reports is conducted on all household members of the applicant family.

B. CYFD shall not license as a foster parent any person who has been convicted of an offense of sexual molestation/sexual abuse of an adult or child, or who has been the subject of a substantiated allegation of sexual molestation/sexual abuse of an adult or child.

C. If a substantiation of child or adult abuse/neglect exists, the application is assessed on a case-by-case basis to determine if the family dynamics that resulted in the abuse/neglect have been resolved. When there is a question, CYFD decides in favor of a foster child and denies the license.

D. A check of the management information system is conducted on all household members each year at the time of annual relicensing. [8.27.2.17 NMAC - Rp, 8.27.2.17 NMAC, 07/15/04]

8.27.2.18 MEDICAL

A. Foster parent applicants

provide medical statements from a physician to CYFD to be considered for licensure.

B. The information provided on the medical statement is reviewed by CYFD to determine if there exist a medical/psychological concern/condition that would impact or limit the individual's ability to foster children.

C. Foster parents provide new medical statements every three years at the time of the annual relicensing.

[8.27.2.18 NMAC - Rp, 8.27.2.18 NMAC, 07/15/04]

8.27.2.19 PHYSICAL STANDARDS FOR FOSTER HOMES

A. The physical standards of each home are evaluated as part of the licensing process using the standards set forth in licensing standards for foster care.

B. The physical standards of each home are evaluated each year at the time of relicensure using the standards set forth in the foster care licensing standards.

C. Only the standards regarding space requirements may be waived to allow for an otherwise acceptable relative foster home license.

[8.27.2.19 NMAC - Rp, 8.27.2.19 NMAC, 07/15/04]

8.27.2.20 REFERENCES

A. CYFD collects a minimum of five personal references on every foster home applicant.

B. Adult children of the foster parent applicant are contacted to provide a reference in addition to the five personal references. Exceptions to references from adult children of foster parent applicants require supervisory approval and documentation as to the reasons for the exception. [8.27.2.20 NMAC - Rp, 8.27.2.20 NMAC, 07/15/04]

8.27.2.21 REQUIRED VERIFICATIONS

A. The applicant provides verification of his/her employment and/or income. To be considered for a foster parent license, the applicant shall have sufficient income, apart from the reimbursement, to support himself/herself and family.

B. The applicant provides verification of any marriages/divorces.

[8.27.2.21 NMAC - Rp, 8.27.2.21 NMAC, 07/15/04]

8.27.2.22 INTERVIEWS : CYFD interviews in person all members of the foster parent applicant household.

[8.27.2.22 NMAC - Rp, 8.27.2.22 NMAC, 07/15/04]

8.27.2.23 FOSTER HOME

LICENSE

A. A foster parent license from CYFD is not an entitlement. The issuance of a license is based upon the review of the information collected and CYFD's professional assessment of the applicant's ability to provide care to the children in CYFD custody.

B. Foster home licenses are valid for one year and are eligible for renewal if the licensing requirements continue to be met.

C. CYFD may temporarily suspend a foster parent license to allow:

(1) the completion of a child abuse/neglect investigation;

(2) the completion of a policy/regulation violation investigation;

(3) the participation of the foster parents in a corrective action plan;

(4) the foster parents time to adjust to a significant family event such as the birth or adoption of a child, etc.; and/or

(5) CYFD to assure safety of children in care.

D. No foster children may be placed in a foster home whose license has been suspended.

E. The foster parents are provided written notification of the suspension and the reason for the suspension.

F. Unless extraordinary circumstances exist, a license may only be suspended for up to six months. At the end of the suspension, CYFD decides whether to reinstate or revoke the license.

[8.27.2.23 NMAC - Rp, 8.27.2.23 NMAC, 07/15/04]

8.27.2.24 LICENSING RELATIVE FOSTER PARENTS

A. CYFD licenses relatives within the fifth degree of consanguinity and documented godparents to provide foster care to children in CYFD's custody in the most family-like setting for the child that is safe, is the least restrictive, is in close proximity, and provides sibling continuity.

B. A child in CYFD's custody may be placed on an emergency basis with a relative when the investigation or treatment worker completes the initial relative assessment by collecting and assessing the following information and obtaining supervisory approval:

(1) the child's attitude toward the relative;

(2) the relative's attitude toward the child and parents;

(3) the relative's motivation to foster the child;

(4) the relative's ability to safely parent the child;

(5) local criminal records check that does not contain a disqualifying conviction;

(6) check of CYFD's manage-

ment information system for abuse or neglect involvement with CYFD; and

(7) completion of the physical licensing checklist.

C. The safety of the child is the primary consideration. If this is ever in conflict with the placement of the child with a relative, CYFD makes the placement decision in favor of the child's safety.

D. Approval of the relative foster parent's license is conditional until such time as the foster care licensing requirements are satisfactorily completed. Relative foster parents are expected to complete all requirements of foster home licensing within 60 days of placement.

E. CYFD considers fictive kin if there are persons who meet this definition identified during the life of the case. Emergency placements may be made with fictive kin, who meet all the requirements for assessing the appropriateness and safety of an emergency placement. Any fictive kin with an emergency placement are required to complete all licensing requirements within 120 days for the placement to continue. [8.27.2.24 NMAC - Rp, 8.27.2.24 NMAC, 07/15/04]

8.27.2.25 DENIAL OF A LICENSE

A. Applicants may be denied licensure at any point in the licensing process when, in the professional opinion of the placement worker, conditions in the prospective foster family home are not conducive to the fostering of children.

B. Applicants who have been denied an initial foster parent license may request an administrative review of the decision. [8.27.2.25 NMAC - Rp, 8.27.2.25 NMAC, 07/15/04]

8.27.2.26 REVOCATION OF A LICENSE

A. A foster home license may be revoked when, in the opinion of the placement worker, conditions in the foster family home are not conducive to the fostering of children.

B. A foster parent whose license has been revoked may request an administrative hearing of that decision. [8.27.2.26 NMAC - Rp, 8.27.2.26 NMAC, 07/15/04]

8.27.2.27 CHANGES IN HOUSEHOLD EFFECTING LICENSURE STATUS

A. Foster parents licensed by CYFD notify CYFD immediately, but no later than three days of any circumstance that may impact their license. Circumstances include but are not limited to:

- (1) birth or death of household member;
- (2) serious illness of household member;
- (3) criminal arrest and/or conviction of any household member;
- (4) new person in the home; and/or
- (5) change in address.

B. CYFD assesses changes within the foster home that may affect licensing status and acts based upon the assessment.

[8.27.2.27 NMAC - Rp, 8.27.2.27 NMAC, 07/15/04]

8.27.2.28 MONITORING AND SUPPORT OF CYFD LICENSED FOSTER HOMES

A. CYFD monitors the foster homes it licenses.

B. At a minimum, CYFD conducts a home visit to the licensed foster parent every six months regardless of placements.

C. CYFD provides the following information to the foster parent concerning a child in placement or a child that the foster parents are considering for placement:

- (1) reason the child is in care, including information about the child's family;
- (2) behavior;
- (3) psychological/emotional concerns;
- (4) educational status; and
- (5) medical.

(6) placement history, if the child has been in custody prior to this placement.

D. CYFD receives, documents and investigates all reported licensing violations and reports of maltreatment in foster care.

E. CYFD provides support to the foster parents it licenses that are under investigation for allegations of child abuse and/or neglect. CYFD is prohibited from acting in such a manner that may interfere with any ongoing criminal investigation.

F. CYFD may develop and implement corrective action plans with foster parents to address parenting and/or licensing and policy concerns. At no time is the safety of a foster child compromised to allow for a foster parent to participate in a corrective action plan.

G. Relative foster homes receive the same monitoring and support afforded to non-relative foster homes.

[8.27.2.28 NMAC - Rp, 8.27.2.28 NMAC, 07/15/04]

8.27.2.29 ROLE AND RESPONSIBILITIES OF FOSTER

PARENT

A. The foster parent is responsible for the daily care and supervision of a child placed in the foster parent's home.

B. The foster parent agrees to abide by all federal, state and local laws and the licensing standards for foster care.

C. The foster parent is a member of the child's case management team and as a team member, participates in the development and implementation of team plans and may participate in conferences, citizen review boards, judicial reviews, individual education plans, etc. Foster parents do not make independent plans for children in their care.

D. When requested by the local education agency (LEA), the foster parent may serve as a surrogate parent to protect the foster child's educational rights and acts as the student's advocate in the educational decision-making process.

E. Foster parents refuse placements which they believe are not appropriate to their home.

F. Foster parents document their observations of the child's attitudes and behaviors on a monthly basis and provide that information to CYFD.

G. Foster parents adhere to the provisions of the Children's Code, 32A-4-33, regarding confidentiality.

H. Foster parents agree to never inflict corporal punishment on a child in foster care, including spanking, hitting, hair or ear pulling, and actions intended to produce fear, shame, or other emotional and/or physical trauma.

I. Foster parents maintain and return all of a child's belongings when he/she moves to another placement, including return home.

J. Foster parents cooperate with and carry out the CYFD plans for the child, including but not limited to working with the biological parent or guardian of a child in placement, returning the child to his/her own parents or guardian, placing with relatives, transferring to other substitute care settings, or adoption planning and placement.

[8.27.2.29 NMAC - Rp, 8.27.2.29 NMAC, 07/15/04]

8.27.2.30 DOCUMENTATION AND RECORDS

A. CYFD maintains records on all foster parents and foster parent applicants.

B. All records concerning foster parents or foster parent applicants are confidential and may only be released in accordance with law or regulation.

C. The results of a foster home or relative foster home assessment are

documented in CYFD's approved homesteady format and filed in the foster parent record.

D. CYFD files all information received on foster parents and applicants, including but not limited to assessment information, copy of foster home license, corrective action plans, investigations and dispositions, history of placements, etc., in the foster parent record.

E. The foster parent is allowed to review the foster parent's own record except for letters of reference, information from third parties, and the identity of any abuse or neglect referral source. Copying the record is not permitted unless allowed by law.

[8.27.2.30 NMAC - Rp, 8.27.2.30 NMAC, 07/15/04]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to Subsection E of Section 9 of 19.30.5 NMAC. There may be a point restricted bull elk bag limit on appeal authorizations issued. Effective date is 7/15/2004.

19.30.5.9 APPEAL REGARDING ALLOCATED AUTHORIZATION CERTIFICATES:

A. Landowners' right to appeal calculation: If a landowner who qualifies under procedures of Subsection F of 19.30.5.8 NMAC disagrees with the allocation of authorization, certificates during the first cycle year of the Big Game regulation 19.31.8 NMAC, he may appeal the officer's findings by first filing a written appeal, with supporting documentation, to the appropriate area chief. Landowners receiving a two-year agreement may not appeal allocations during the second cycle year of the Big Game regulation 19.31.8 NMAC. New landowners who have signed up during the second cycle year of the Big Game regulation may appeal for the current year. Non-qualifying authorization certificates are non-appealable.

(1) Supporting documentation must include, but not limited to, current and legal documentation of total acreage, a map of the property boundaries, and estimation of elk numbers on the property, season and length of elk use.

(2) Receipt of an appeal at the area office must be postmarked by May 15 of each license year. Receipt of the appeal begins the following process:

B. Area level investigation: The area chief will investigate the appeal and will notify the landowner in writing, of their findings within fifteen (15) working days after receipt of proper docu-

mentation. Copies of the area chief's findings will be forwarded to the chief of wildlife. The landowner may appeal, in writing, within ten (10) working days after notification to the chief of wildlife.

C. Santa Fe office investigation: Within five (5) working days after receipt of documentation from the landowner the chief of wildlife will investigate the appeal and notify the landowner in writing, as to his findings.

D. Appeal to state game commission: Within ten (10) working days after receipt of documentation from the chief of wildlife, the landowner may appeal, in writing to the state game commission.

E. Hearing by the state game commission: If the state game commission agrees to hear the appeal, it will be held at a regularly scheduled meeting. The landowner may present witnesses and supporting documentation during the hearing.

(1) The department may also furnish witnesses and supporting documentation.

(2) The state game commissions' decision will be final.

(3) The department may impose a "point restricted bull elk bag limit" on appeal authorizations issued to qualifying ranches in GMU 4 who appeal the number of MB-A authorizations they receive and upon investigation and determination that the appeal is to be granted.

[4-1-95; A, 4-15-97; 19.30.5.9 NMAC - Rn & A, 19 NMAC 30.5.9, 01-15-01; A, 11-14-02; A, 7-15-2004]

NEW MEXICO PUBLIC REGULATION COMMISSION

TITLE 1: GENERAL GOVERNMENT ADMINISTRATION

CHAPTER 2: ADMINISTRATIVE PROCEDURES

PART 3: EX PARTE COMMUNICATIONS

1.2.3.1 ISSUING AGENCY: New Mexico Public Regulation Commission.

[1.2.3.1 NMAC - N, 7-15-04]

1.2.3.2 SCOPE: This rule applies to commissioners, hearing examiners, advisory staff, and any party to a commission proceeding.

[1.2.3.2 NMAC - N, 7-15-04]

1.2.3.3 STATUTORY AUTHORITY: NMSA 1978 Section 8-8-17.

[1.2.3.3 NMAC - N, 7-15-04]

1.2.3.4 DURATION: Permanent.

[1.2.3.4 NMAC - N, 7-15-04]

1.2.3.5 EFFECTIVE DATE: July 15, 2004, unless a later date is cited at the end of a section.

[1.2.3.5 NMAC - N, 7-15-04]

1.2.3.6 OBJECTIVE: The purpose of this rule is to implement NMSA 1978 Section 8-8-17 by regulating ex parte communications concerning commission proceedings so as to ensure the fairness and integrity of the commission's decision-making process.

[1.2.3.6 NMAC - N, 7-15-04]

1.2.3.7 DEFINITIONS: As used in this rule:

A. advisory staff means a person hired by the chief of staff, with the consent of the commission, with expertise in regulatory law, engineering, economics or other professional or technical disciplines, to advise the commission on any matter before the commission, including a member of the commission's office of general counsel or an expert or staff hired by the chief of staff on a temporary, term or contract basis for a particular case, but not including persons hired by an individual commissioner who serve at the pleasure of that commissioner;

B. ex parte communication means a direct or indirect communication with a party or his representative, outside the presence of the other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication, that deals with substantive matters or issues on the merits of the proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation that deals with substantive matters or issues on the merits of the proceeding;

(1) ex parte communications do not include:

(a) statements made by commissioners, hearing examiners, or advisory staff that are limited to providing publicly available information about a pending adjudication or rulemaking after the record has been closed; or

(b) inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken;

(2) ex parte communications include a status inquiry which states or implies:

(a) a view as to the merits or outcome of a rulemaking after the record has been closed or a pending adjudication;

(b) a preference for a particular

party, or a reason why timing is important to a particular party;

(c) a view as to the date by which a proceeding should be resolved; or

(d) a view which is otherwise intended to address the merits or outcome, or to influence the timing, of a pending adjudication or rulemaking after the record has been closed;

C. hearing examiner means a person appointed by the commission pursuant to NMSA 1978 Section 8-8-14 to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters, and provide the commission with findings of fact, conclusions of law, and a recommended decision on the matter assigned;

D. party, unless otherwise ordered by the commission, means:

(1) a person who has been given formal party status;

(2) a person who has submitted to the commission a filing seeking affirmative relief, including, but not limited to, an application, waiver, motion, tariff change or petition;

(3) a person who has filed a formal complaint, petition for order to show cause, petition for investigation or petition for notice of inquiry;

(4) the subject of a formal complaint, order to show cause, investigation or notice of inquiry;

(5) members of the general public, after the issuance of an order closing the record in a rulemaking proceeding; and

(6) staff of the commission's utility division, transportation division, or insurance division directed by statute to represent the public interest in a proceeding before the commission;

E. pending adjudication means any matter docketed, or, in the case of a party represented by counsel, any matter that an attorney representing such party reasonably believes will be docketed, before the commission, including, but not limited to, formal complaint proceedings, show cause proceedings, investigations, notices of inquiry, application proceedings, petitions, and any matter other than a rulemaking requiring decision or action by the commission.

[1.2.3.7 NMAC - N, 7-15-04]

1.2.3.8 EX PARTE COMMUNICATIONS PROHIBITED:

A. A commissioner shall not initiate, permit, or consider a communication directly or indirectly with a party or his or her representative, outside the presence of other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a com-

munication directly or indirectly with a party or his or her representative, outside the presence of other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication.

C. Advisory staff shall not initiate, permit, or consider a communication directly or indirectly with a party or his or her representative, outside the presence of other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication.

[1.2.3.8 NMAC - N, 7-15-04]

1.2.3.9 EX PARTE COMMUNICATIONS PERMITTED:

A. Procedural or administrative purposes. Where circumstances require, ex parte communications for procedural or administrative purposes or emergencies, that do not deal with substantive matters or issues on the merits, may be permitted if the commissioner, hearing examiner, or advisory staff reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner, hearing examiner, or advisory staff makes provisions promptly to notify all other parties of the substance of the ex parte communication.

B. Uncontested proceedings. Ex parte communications may be permitted concerning pending adjudications in which the matter is ripe for decision and no party to the proceeding, including staff, is in opposition to the relief requested.

C. Internal commission communications. Commissioners, hearing examiners and advisory staff may consult with each other.

D. Nonparty expert. A commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

[1.2.3.9 NMAC - N, 7-15-04]

1.2.3.10 DISCLOSURE

REQUIRED: A commissioner, hearing examiner, or advisory staff member who receives, makes, or knowingly causes to be made a communication prohibited by this rule shall disclose it to all parties and give other parties an opportunity to respond. The person to whom the prohibited communication was made shall:

A. disclose the prohibited communication by filing a copy of a written communication or a summary of an oral communication in the record of the proceeding within five (5) calendar days of the communication; and

B. serve the disclosure on

all parties to the proceeding in accordance with Subsection C of 17.1.2.10 NMAC, except in proceedings involving numerous parties where the commission or hearing examiner determines that disclosure by publication would better serve administrative economy.

[1.2.3.10 NMAC - N, 7-15-04]

1.2.3.11 SANCTIONS: Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner, hearing examiner, or advisory staff member in violation of NMSA 1978 Section 8-8-17 or this rule, the commissioner or hearing examiner may, pursuant to Subsection E of that section, require the party to demonstrate that no unfair advantage was gained from the communication, may permit other parties the opportunity to respond, and may dismiss, deny, disregard, or otherwise take adverse action on the claim or interest in the proceeding.

[1.2.3.11 NMAC - N, 7-15-04]

HISTORY OF 1.2.3 NMAC: [Reserved]

NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY

This is an amendment to 6.50.1 NMAC, Sections 3, 5 and 7, effective 7/15/2004. This action also renumbers and reforms 6 NMAC 50.1 to 6.50.1 NMAC in conformance with current NMAC requirements.

6.50.1.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the Public Schools Insurance Authority Act, [Section 22-2-6.7(E) NMSA 1978 (Rpl. 1986)] Subsection D of Section 22-29-7 NMSA 1978, which directs the NMPSIA to promulgate necessary rules, regulations and procedures for the implementation of the New Mexico Public Schools Insurance Authority Act, Section [22-2-6.1] 22-29-1 et seq. NMSA 1978 [(Rpl. 1986)].

[10-15-97; 6.50.1.3 NMAC - Rn & A, 6 NMAC 50.1.3, 7/15/2004]

6.50.1.5 EFFECTIVE DATE:

3-22-93, unless a later date is cited at the end of a section [or paragraph].

[10-15-97; 6.50.1.5 NMAC - Rn & A, 6 NMAC 50.1.5, 7/15/2004]

6.50.1.7 DEFINITIONS:

The definitions listed below cover all rules and regulations concerning risk-related and employee-benefit coverages issued by the authority [Title 6, Chapter 50, Parts 1-15].

A. **"Abatement"** or "recommendation compliance" means the elimination of a recognized risk-related hazard and that the elimination has been implemented as the result of a recommendation.

B. **"Affidavit of domestic partnership"** means a sworn, written statement, in a form approved by the authority, by which both members of a domestic partnership affirm, solely for the purpose of obtaining employee domestic partner benefits through the authority, that:

(1) the partners are in an exclusive and committed relationship for the benefit of each other, and the relationship is the same as, or similar to, a marriage relationship in the state of New Mexico;

(2) the partners share a primary residence and have done so for twelve or more consecutive months;

(3) the partners are jointly responsible for each other's common welfare and share financial obligations;

(4) neither partner is married or a member of another domestic partnership;

(5) both partners are at least 18 years of age;

(6) both partners are legally competent to sign an affidavit of domestic partnership; and

(7) the partners are not related by blood to a degree of closeness that would prevent them from being married to each other in the state of New Mexico.

C. **"Affidavit terminating domestic partnership"** means a sworn, written statement, in a form approved by the authority, by which an employee notifies the authority that domestic partner benefits should be terminated because the employee's domestic partnership relationship is terminated.

[B] D. **"Authority"** or "NMP-SIA" means the New Mexico public schools insurance authority.

[C] E. **"Board"** means the board of directors of the authority.

[D] E. **"Business"** means a corporation, partnership, sole proprietorship, firm, organization, or individual carrying on a business; or owning real property other than a personal residence.

[E] G. **"Change of status"** means the change of status of an eligible employee or eligible dependent by:

(1) death;

(2) divorce or annulment;

(3) loss of employment;

(4) loss of group or individual health insurance coverage through no fault of the person having the group insurance coverage;

(5) birth;

(6) adoption or child placement order in anticipation of adoption;

(7) legal guardianship;

(8) marriage;

~~(9) full time student status;~~
~~(10) non full time student status;~~
~~(11) (9) incapacity; [or]~~
 (10) establishment or termination through affidavit of a domestic partnership; or

~~(12) (11) fulfilling the active-at-work and minimum qualifying number of hours through promotion with salary increase to, or acceptance of, a full-time position with the same participating entity.~~

[F] H. **"Contract period"** when applied to employee benefit or risk-related coverages means the established period of time over which the authority provides insurance to participating entities which term shall be specified by the board as part of a notice of coverage. The contract period may be different for different offerings. The contract period shall not exceed eight years.

[G] I. **"Costs"** means the direct and indirect monetary and economic costs of insurance.

[H] J. **"Coverage"** means insurance protection offered to or provided by the authority to persons or entities entitled to participate in the authority offerings.

[I] K. **"Creditability"** means allowing credit a day for a day against the time of a pre-existing condition for a new enrollee's past coverage. The past coverage may be used to reduce the pre-existing condition time period defined in ~~[7-42]~~ Subsection VV of 6.50.1.7 NMAC if no more than sixty-three (63) days have run between the termination of past coverage and enrollment. Each day in the former plan reduces time of the pre-existing condition by a day.

[J] L. **"Critical hazard"** means any risk-related exposure, hazardous condition, or other circumstance having an above average potential for immediate occurrence and is not immediately life threatening; such a hazard is of less severity than an imminent hazard.

[K] M. **"Deductible"** means the dollar amount which will be deducted from any payments made to or on behalf of the participating entity.

N. **"Domestic partner"** means a person related to an employee of an entity offering domestic partner benefits where the employee and the partner submit a properly executed affidavit of domestic partnership and where the employee and the partner presently:

(1) are in an exclusive and committed relationship for the benefit of each other, and the relationship is the same as, or similar to, a marriage relationship in the state of New Mexico;

(2) share a primary residence and have done so for twelve or more consecutive months;

(3) are jointly responsible for

each other's common welfare and share financial obligations; and

(4) are not married or a member of another domestic partnership.

O. **"Domestic partner benefits"** means dependent insurance coverage for a domestic partner offered to an employee as a benefit of employment pursuant to a written petition adopted by a member's governing body that:

(1) states that the member's governing body has voted in an open, public meeting to offer or withdraw domestic partner benefits to its employees;

(2) sets forth the percentage contribution, if any, the member will make toward an employee's premium for domestic partner coverage; and

(3) describes any evidence (documentation or other) the member will require in support of an affidavit of domestic partnership; and

(4) is received by the authority at 410 Old Taos Highway, Santa Fe, New Mexico 87501, before the effective date the coverage is to begin or end.

[L] P. **"Eligible dependent"** means a person obtaining authority health care coverage based upon that person's relationship to the eligible employee as follows:

(1) a person whose marriage to the eligible employee is evinced by a marriage certificate or who has a legally established common-law marriage in a state which recognizes common-law marriages and then moves to New Mexico;

(2) a person who is the domestic partner of an eligible employee, employed by an entity offering domestic partner benefits;

~~(2) (3)~~ (3) an unmarried child under the age of ~~[19] 25~~, who is either:

(a) a natural child;

(b) a legally adopted child pursuant to NMSA 1978, Section 32A-5-1, et. seq. or otherwise by placement order, court order or decree;

(c) a step child living in the same household who is primarily dependent on the eligible employee for maintenance and support;

(d) a natural or legally adopted child of the eligible employee's domestic partner or a child placed in the domestic partner's household as part of an adoptive placement, legal guardianship, or by court order (excluding foster children) and who is living in the same household and who is primarily dependent on the eligible employee for maintenance and support;

~~(4) (e)~~ (e) a child for whom the eligible employee is the legal guardian and who is primarily dependent on the eligible employee for maintenance and support, so long as evidence of the guardianship is evidenced in a court order or decree;

~~(4) (f)~~ (f) a foster child living in the

same household as a result of placement by a state licensed placement agency, so long as the foster home is licensed pursuant to NMSA 1978 Section 40-7A-1, et. seq.;

~~(f)~~ (g) a child living in the same household after a petition for adoption of that child has been filed pursuant to NMSA 1978, Section 32A-5-1 et. seq., and/or a pre-placement study is pending for purposes of adoption of the child pursuant to NMSA 1978, Section 32A-5-1 et. seq.; or

~~(g)~~ (h) a dependent child pursuant to a qualified medical support order.

~~(3) a child otherwise described in Subparagraphs 1. through 7. of Paragraph 2 of this subsection who is between the ages of 19 and 25 and is a full-time student at a post-secondary institution that is regionally or nationally accredited by an agency that is recognized by the U.S. department of education and the commission on higher education; or an elementary/secondary school that is accredited by a state board of education or its state equivalent, provided that "full-time student" shall be a student enrolled in sufficient contact hours in primary, secondary, undergraduate or vocational/technical school to qualify as a full-time student under the school's policies or a student enrolled in and taking nine (9) or more semester hours or its quarter or trimester equivalent contact hours in a nationally or regionally accredited graduate school;~~

(4) a dependent child over 25 who is wholly dependent on the eligible employee for maintenance and support and who is incapable of self-sustaining employment by reason of mental retardation or physical handicap, provided that proof of incapacity and dependency must be provided within thirty-one (31) days before the child reaches 19 years of age. Any child who becomes so incapacitated while covered shall be allowed to continue coverage thereafter during the period of incapacity, and such times thereafter as may be authorized by the board;

~~(5) a surviving spouse defined as follows:~~

~~(a) "surviving spouse" means the spouse to whom an employee was married at the time of death; or~~

~~(b) "surviving spouse" means the spouse to whom a deceased active employee was married at the time of death; and~~

~~(6)~~ (5) a surviving dependent child who is the dependent child of a deceased eligible employee whose other parent is also deceased;

~~(7)~~ (6) no provision in [subsections 7.12.1 through 7.12.6 above] Paragraphs 1 through 7 of Subsection P of 6.50.1.7 NMAC shall result in eligibility of any person adopted by an eligible member pursuant to the adult adoption provisions of NMSA 1978, Section 40-14-5; and

~~(8)~~ (7) no provision in [subsections 7.12.1 through 7.12.6 above] Paragraphs 1 through 7 of Subsection P of 6.50.1.7 NMAC shall result in eligibility of any person who has met the requirements of any such subsection for the primary purpose of obtaining eligibility under this chapter. Any denial of eligibility under this subsection may be submitted for dispute resolution to the director of the authority pursuant to [6 NMAC 50.10.8.6.6 7 of this chapter] Paragraph 6 of Subsection F of 6.50.10.8 NMAC, and the director's decision may be appealed [to the authority board for final decision pursuant to that subsection] by following the procedures specified in 6.50.16 NMAC, Administrative Appeal of Authority Coverage Determinations.

~~(M)~~ Q. "Eligible participating entity board member or authority board member" means an active participating entity board member whose entity is currently participating in the authority employee benefits coverages or who is eligible as an active authority board member or as an eligible retiree [(as defined in 7.13)] (Subsection R of 6.50.1.7 NMAC).

~~(N)~~ R. "Eligible retiree" means:

(1) a "non-salaried eligible participating entity governing authority member" who is a former board member, who has served without salary as a member of the governing authority of an employer eligible to participate in the benefits coverages of the authority, and is certified to be such by the director of the authority and has continuously maintained group health insurance coverage through that member's governing authority; and also includes an active member of the authority board and a former member of the authority board who has continuously maintained authority group health insurance. With respect to authority and participating entity board members who begin service after January 1, 1997, they may participate in the benefits coverages during the time of their active service, but at the end of their service shall no longer be eligible for authority coverages.

(2) a "grandfathered retired employee" or "grandfathered retired employee dependent" defined as a retired employee or the dependent of the retired employee which meets all applicable retirement rules of the Educational Retirement Act and educational retirement board but does not receive an Educational Retirement Act pension, and who has been allowed to continue authority coverages prior to the enactment of the Retiree Health Care Authority Act or by agreement between a new member school district or other educational entity.

(3) a "retired employee" who is drawing an Educational Retirement Act pension or with respect to a retired authori-

ty employee, a Public Employee Retirement Act pension, and desires to participate in the authority voluntary life coverage.

~~(O)~~ S. "Eligible employee" means an employee of an employer eligible to participate in the benefits coverages of the authority, and which includes the following: Eligible participating entity board members [~~defined in 7.13~~] (Subsection Q of 6.50.1.7 NMAC), full-time employees [~~defined in 7.20~~] (Subsection X of 6.50.1.7 NMAC), or eligible part-time employees [(as defined in 7.16)] (Subsection T of 6.50.1.7 NMAC). Coverage terminates at the end of the period from which deductions are made from the payroll check or for a board member the day the term expires, and the individual is no longer eligible to be in the benefits program, except for continuation of benefits privileges under state law or COBRA.

~~(P)~~ I. "Eligible part-time employee" means a person employed by, paid by, and working for the participating entity less than 20 hours but not less than 15 hours per week during the academic school term or terms and is determined to be eligible for participation in authority employee benefits coverages by an annual resolution which, prior to May 1 of the previous year, is adopted by the participating entity governing board and approved by the authority board.

~~(Q)~~ U. "Employee benefits minimum benefit standards" mean the minimum coverages, minimum limits and other factors as specified in authority rules for which insurance is offered.

~~(R)~~ V. "Established enrollment period" means the period of time and the dates in which an enrollment period is authorized by the authority. The established period shall be determined by the board on separate lines of employee benefit coverages during the periods the board deems appropriate

~~(S)~~ W. "Financial interest" means an interest of ten percent or more in a business or an interest exceeding ten thousand dollars (\$10,000.00) in a business. For a board member, official, employee, agent, consultant or attorney this means an interest held by the individual, his or her spouse, his or her domestic partner, or minor children.

~~(T)~~ X. "Full-time employee" means a person employed by, paid by and working for the participating entity 20 hours or more per week during the academic school term or terms. A full-time employee includes a participating entity board member as defined in authority rules.

~~(U)~~ Y. "Fund" means the authority account or accounts in which the money received by the authority is held.

Z. "Governing body" means the elected or appointed board or other governing body that oversees and

makes the policy decisions for the school board or educational entity. (See also **"Participating entity governing board."**)

[X] **AA. "Health maintenance organization or HMO service area"** means the service area set out in the agreement between the HMO and the authority.

[W] **BB. "Imminent hazard"** means that conditions or practices exist requiring suspension of the operation so as to avoid the threat of occurrence and which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the recommended abatement.

[X] **CC. "Ineligible dependents"**

(1) common law relationships of the same or opposite sex which are not recognized by New Mexico law unless domestic partner benefits are offered by the employee's entity;

(2) dependents while in active military service;

(3) parents, aunts, uncles, brothers and sisters;

(4) grandchildren left in the care of an eligible employee without evidence of legal guardianship; and

(5) any other person not specifically referred to as eligible.

[Y] **DD. "Insider information"** means information which is confidential under law or practice or which is not generally available outside the circle of those who regularly serve the authority as a board member, official, employee, agent, consultant or attorney.

[Z] **EE. "Insurance"** means basic insurance, excess insurance, re-insurance, retrospective rated insurance, self-insurance, self-insured retention and all other mechanisms to provide protection for risks assumed by the authority.

[AA] **FF. "Insurance policy"** means one or more basic insurance policies, excess insurance policies, reinsurance policies, retrospective rated insurance policies, or other insurance policies sought or obtained by the authority from one or more insurance companies to provide contractual protection against one or more risks, one or more perils or one or more lines of coverage. The same coverages apply to any self-insured portion of the risk as are defined in the insured portion of the risk.

[BB] **GG. "Late enrollee"** means an eligible employee enrolled pursuant to [8.1.6 or 8.2.4 of Part 10 of this Chapter] Paragraph (6) of Subsection A of 6.50.10.8 NMAC or Paragraph (3) of Subsection B of 6.50.10.8 NMAC, subject to [7.9 of Part 1] Subsection K of 6.50.1.7 NMAC.

[CC] **HH. "Line"** means insurance protection which protects against a specific category or set of perils.

[DD] **II. "Loss prevention"** means a system for identification and reduction of risk-related exposures, hazardous conditions, or other circumstances likely to produce a loss with regard to the applicable coverage provided by the authority.

[EE] **JJ. "Loss prevention representative"** means the employee of the contracted risk-related agency or the authority charged with the responsibility of providing loss prevention services to the authority.

KK. "Member" and "members" means all public school districts and charter schools mandated by the New Mexico Public Schools Insurance Authority Act, NMSA 1978, Section 22-2-6.1 et seq. to be members of the authority and all other educational entities voluntarily participating in the authority.

[FF] **LL. "Minimum participation level"** means that level of required participation by eligible employees of a participating entity in the authority employee benefits coverages for the particular line of coverage. The percentage level of required participation may vary from one line of coverage to another line of coverage as determined by the board from time to time.

[GG] **MM. "Multi-option offering"** refers to a health plan coupled with one or more HMO plans where all of the plans shall be considered as a single health offering in which the participant has a choice between a health indemnity plan and one of the HMO plans offered in the geographic areas.

[HH] **NN. "Native American employees"** or "Native American dependents" are those persons on the membership rolls of any recognized Indian tribe, nation, or pueblo.

[I] **OO. "Offering"** refers to any single line offering, multi-option or package offering offered by the authority.

[J] **PP. "Other educational entity"** means an authority member or eligible member as defined in Section 22-2-6.3 NMSA.

[KK] **QQ. "Package offering"** refers to the combining together of two or more lines of insurance by the authority to offer insurance to any person or entity authorized to participate in the authority's coverage. Normally, the authority will create a package offering to combine one or more lines of insurance for which there is generally no insurance policy commercially available in most parts of the state with one or more lines of insurance which are readily commercially available in most parts of the state. An example of this type of package offering is the combining together of civil rights and personal injury insurance for which there is generally no insurance policy commercially available in most parts of the state with property and personal prop-

erty insurance for which there is generally an insurance policy commercially available in most parts of the state. The combining of more than one line of insurance in this fashion is designed to provide coverage for lines which are not generally available and to reduce the overall cost of coverage.

[LL] **RR. "Participant"** means a person receiving employee benefit coverage from the authority for the particular line of coverage.

[MM] **SS. "Participating entity"** means a school district, an educational entity or other person or entity receiving authority coverage of one or more offerings.

[NN] **TT. "Participating entity board member"** means a person that is elected or appointed to serve and is serving as a member of the governing board of a participating entity or the authority.

[OO] **UU. "Participating entity governing board"** means the elected or appointed board or other governing body that oversees and makes the policy decisions for the school board or educational entity.

[PP] **VV. "Pre-existing condition"** means a physical or mental condition for which medical advice, diagnosis, care or treatment was recommended or received by the enrollee within the time period prior to enrollment and such person may enroll (if permitted by these rules) in the point of service, non-HMO plan only as follows:

(1) persons enrolling late, eighteen months;

(2) persons eligible as a result of "special events" pursuant to [7.54] Subsection HH of 6.50.1.7 NMAC six months, except for newborns, adoptions, placements for adoption which shall not be subject to pre-existing condition; or

(3) new eligible employees enrolled pursuant to [8.1.2, part 10] Paragraph 2 of Subsection A of 6.50.10.8 NMAC, six months;

(4) pre-existing conditions are subject to creditability defined in [7.9] Subsection K of 6.50.1.7 NMAC.

[QQ] **WW. "Public official"** means a person serving the authority as board member, official, employee, agent, consultant or attorney or as a member of an *ad hoc* or standing authority advisory committee.

[RR] **XX. "Recommendation"** means a method or means of risk-related corrective action suggested to a participating entity to eliminate a designated hazard.

[SS] **YY. "Request for waiver"** means a request for waiver of participation.

[TT] **ZZ. "Review board"** means the risk related loss prevention review board and in the event such is not designated by the board means the risk advisory committee of the board.

~~[UU]~~ **AAA.** " **R F P** " means a request for proposals and consists of all papers including those attached to or incorporated by reference in a document used to solicit proposals for insurance policies or professional services.

~~[VV]~~ **BBB.** "**Risk-related coverage**" includes, but is not limited to, the following types of protection:

(1) all types of property, inland marine, boiler and machinery coverage, including but not limited to buildings, contents, valuable papers, extra expense, electronic data processing and media, personal property, owned builder's risk coverage, loss of rents, architects fees, property in transit, accounts receivable, glass, fine arts, building sprinkler leakage, acts of vandalism and malicious mischief, civil authority clause, earthquake or flood damage, mobile equipment, ordinary deficiency clause, drop down coverage, tuition fees and removal clause;

(2) all types of crime coverage, including but not limited to theft, larceny, embezzlement, burglary, robbery - inside and outside, employee dishonesty, faithful performance, depositor's forgery, counterfeit papers, mysterious disappearance and fiduciary responsibility;

(3) all types of general liability coverage, including but not limited to bodily injury, property damage, personal injury, errors and omissions, all types of malpractice, employer's liability, school board member's liability, host liquor law liability, cross liability, watercraft liability and employee benefits liability;

(4) all types of civil rights and personal injury liability coverage, including but not limited to bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, violation of civil rights, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination, humiliation, invasion of rights of privacy, libel, slander or defamation of character, piracy, infringement of copyright or property, erroneous service of civil papers, assault and battery, disparagement of property and including injunctive relief;

(5) all types of motor vehicle and fleet physical damage and liability coverage, including but not limited to physical damage, medical payments, collision, comprehensive, non-owned and hired vehicles, bodily injury and property damage, uninsured and underinsured motorist, automatic acquisition and garage keeper's legal liability;

(6) all types of school bus physical damage and liability coverage, including but not limited to physical damage, medical payments, collision, comprehensive, non-owned and hired vehicles bodily injury and property damage, uninsured and underin-

sured motorist, automatic acquisition and garage keeper's legal liability; and

(7) all types of worker's compensation coverage, including but not limited to worker's compensation, employer's liability, and occupational disease and disablement.

~~[WW]~~ **CCC.** "**Risk-related financial standards**" means the total of all direct and indirect costs of the insurance offered.

~~[XX]~~ **DDD.** "**Risk-related minimum benefit standards**" mean the minimum perils, minimum coverages, minimum limits and other factors as specified in ~~[6 NMAC 50.13]~~ 6.50.13 NMAC for which insurance is offered.

~~[YY]~~ **EEE.** "**School district**" means any school district as defined in Section 22-1-2 N.M.S.A. 1978, excluding any school district with a student enrollment in excess of sixty thousand students.

~~[ZZ]~~ **FFF.** "**Self-insured retention**" means that dollar amount from the first dollar of loss to a dollar level determined by the authority for which there is no insurance policy covering the risk and the risk of loss is retained by the authority.

~~[AAA]~~ **GGG.** "**Single line offering**" means the offering of a single line of insurance by the authority to any person or entity authorized to participate in the authority's coverage. Examples of these types of single line offerings are worker's compensation insurance coverage and dental insurance coverage.

~~[BBB]~~ **HHH.** "**Special events**" mean events that permit enrollment in employee-benefits coverages subject to any pre-existing conditions defined in ~~[7.42]~~ Subsection VV of 6.50.1.7 NMAC. These types of special events are listed as follows.

(1) The employee is eligible but not enrolled and suffers a loss of coverage because coverage of the employee's spouse, domestic partner or child under another plan is terminated as a result of divorce, death, termination of employment, reduction in hours, legal separation or termination of employer contributions.

(a) Upon the occurrence of the special event defined in ~~[7.54.1]~~ Paragraph (1) of Subsection HHH of 6.50.1.7 NMAC, if there is a loss of coverage by an employee, there may be enrolled within thirty-one (31) days of the loss of coverage the employee only; the employee and spouse or domestic partner; the employee and child/children; or the employee, spouse or domestic partner and child/children.

(b) Upon the occurrence of the special event defined in ~~[7.54.1]~~ Paragraph (1) of Subsection HHH of 6.50.1.7 NMAC, if there is a loss of coverage by a spouse or domestic partner, there may be enrolled within thirty-one (31) days of the loss of coverage the employee, spouse or domestic

partner and child/children.

(c) Upon the occurrence of the special event defined in ~~[7.54.1]~~ Paragraph (1) of Subsection HHH of 6.50.1.7 NMAC, if there is a loss of coverage by a child/child, there may be enrolled within thirty-one (31) days of the loss of coverage the child/children.

(2) The employee is a participant in the plan and the employee's spouse, domestic partner or child suffers a loss of coverage. On occurrence of this special event there may be enrolled within thirty-one (31) days the spouse, domestic partner and or the child/children.

(3) The employee is eligible, but not enrolled in the plan and the employee marries or establishes a domestic partnership by affidavit. On occurrence of this special event there may be enrolled within thirty-one (31) days the employee only; the employee and spouse or domestic partner only; or the employee, spouse or domestic partner and all eligible children.

(4) The employee is eligible, but not enrolled in the plan and a child is born, adopted or placed for adoption in the employee's family. On occurrence of this special event there may be enrolled within thirty-one (31) days the employee only; the employee and spouse or domestic partner only; or the employee, spouse or domestic partner and all eligible children.

(5) The employee is enrolled in the plan and marries or establishes a domestic partnership by affidavit. On the occurrence of this special event the spouse or the spouse and all eligible children may be enrolled within thirty-one (31) days of the marriage.

(6) The employee is enrolled in the plan and a child is born, adopted or placed for adoption in the employee's family. Within thirty-one (31) days of the occurrence of this special event the spouse or domestic partner, or the spouse or domestic partner and all eligible children may be enrolled.

~~[CCC]~~ **III.** "**State**" means the state of New Mexico.

~~[DDD]~~ **JJJ.** "**Waiver**" or "waiver of participation" means a written document issued by the authority to a school district excusing the school district participation in an authority offering. A school district may submit a request for waiver of participation for each authority offering.

[09-26-86; 10-27-88, 11-4-88, 03-22-93, 05-20-94; 10-15-97; 6.50.1.7 NMAC - Rn & A, 6 NMAC 50.1.7, 7/15/2004]

NEW MEXICO PUBLIC SCHOOLS INSURANCE AUTHORITY

This is an amendment to 6.50.10 NMAC, Sections 3, 5, 6 and 8, effective 7/15/2004. This action also renumbers and reformats 6 NMAC 50.10 to 6.50.10 NMAC in conformance with current NMAC requirements.

6.50.10.3 STATUTORY

AUTHORITY: This part is promulgated pursuant to the Public Schools Insurance Authority Act, [Section 22-2-6.7(E) NMSA 1978 (Rpl. 1986)] Subsection D of Section 22-29-7 NMSA 1978, which directs the NMPSIA to promulgate necessary rules, regulations and procedures for the implementation of the New Mexico Public Schools Insurance Authority Act, Section [22-2-6.4] 22-29-1 et seq. NMSA 1978 [Rpl. 1986]. [10/31/86; 10/15/97; 6.50.10.3 NMAC - Rn & A, 6 NMAC 50.10.3, 7/15/2004]

6.50.10.5 EFFECTIVE DATE:

5-20-94, unless a later date is cited at the end of a section [or paragraph]. [10/15/97; 6.50.10.4 NMAC - Rn & A, 6 NMAC 50.10.5, 7/15/2004]

6.50.10.6 OBJECTIVE:

A. The objective of this part is to establish the enrollment policy for school districts, educational entities, eligible employees, eligible participating entity board members, eligible retired employees, eligible dependents and persons or entities authorized to participate in the authority's employee benefits coverage. The authority is permitted to accept certain classes of employees for an established enrollment period upon request by the participating entity and approval by the authority. This part also establishes rules for new eligible employee enrollment, change in status enrollment for eligible dependents, change in status enrollment for eligible employees, eligible employees new dependent enrollment, eligible participating entity board members, retiree enrollment and when proof of medical insurability will be required in these cases, requiring certain documentation of retirees, their eligible dependents, other newly eligible dependents and employees or dependents claiming improper loss of coverages.

B. Also rules are established with regard to conflicts between carrier contracts, school policy, this part and local policy, miscommunications and appeals. This part:

- (1) accommodates an employee

whose spouse or domestic partner is in a plan which denies dependent coverage if other coverage is available;

(2) allows for coordination of authority and retiree health care authority coverages;

(3) allows for coordination of authority coverages with coverages of an otherwise eligible spouse or dependent;

(4) provides for accommodation of a divorced employee whose children's coverage is provided under a plan of an ex-spouse;

(5) provides for accommodation of an employee leaving a domestic partner relationship and whose children's coverage is provided under a plan of the ex-domestic partner:

~~(5)~~ (6) prohibits dropping of coverage if such prohibition is negotiated in a carrier contract;

~~(6)~~ (7) waives the requirement that all family members be in any line of coverage in the event a pre-existing condition prevents a family member from late enrollment;

~~(7)~~ (8) allows medical coverage and enrollment in family dental and vision for Native American employees or dependents;

~~(8)~~ (9) provides for special events enrollment; and

~~(9)~~ (10) provides for late enrollment.

[10-31-86, 11-04-88, 05-20-94; 10-15-97; 6.50.10.6 NMAC - Rn & A, 6 NMAC 50.10.6, 7/15/2004]

6.50.10.8 EMPLOYEE REQUIREMENTS FOR ENROLLMENT:

An enrolling employee shall be enrolled pursuant to his or her actual status at the time of enrollment or at any other time a change in status occurs. Each such enrollee's status must be the same for all lines of coverage (i.e. single, two party or family). An employee shall add eligible dependents at the time of acquiring them. An employee may enroll himself or herself only, however, if the employee chooses to enroll an eligible dependent, the employee shall enroll all eligible dependents unless one or more eligible dependents have other coverage. If the spouse of an eligible employee participant is enrolled in the medical plan of the retiree health care authority, the eligible employee participant may enroll in the medical plan as a single and in the two-party or family coverage of other lines. (A retired spouse is not required to elect dental and vision through the retiree health care authority.) Any eligible employee desiring to enroll for employee benefit coverages shall meet the following requirements:

- A. **Employee Enrollment**

and Payroll Deductions

(1) **Eligible Employee Enrollment Period.** When an established enrollment period is allowed by the participating entity and the authority, eligible employees may enroll during the established period under the conditions set forth by the authority.

(2) **New Eligible Employee Enrollment.** New eligible employees shall enroll within thirty-one (31) calendar days of hire or within thirty-one (31) calendar days of being upgraded to that of an eligible employee. Evidence of upgrade is required. A new participating entity board member or new participating authority board member shall enroll at any time within thirty-one (31) days of being sworn in to office. An employee is eligible for coverage on the first day of the month following the day the premium is withheld from the payroll check, and for self-payers, the first day of the month following receipt of the premium by the authority, subject to the active-at-work provision.

(3) Where an employee is on a twelve-month payroll option, the employer shall deduct and remit from each payroll and remit the employer's contribution simultaneously.

(a) **Active at Work Requirement.** Eligible employees shall be employed at the school place of business, or other location if his job requires him/her to travel, on the date the benefits are to go into effect. Provided, however, with regard to members of the policy making board or body, the active at work requirement does not apply. Coverage would become effective on the date the employee returns to work at the school place of business.

(b) **Transfer of Employee's Benefits.**

(i) **Outgoing School:** The employee is covered until the end of the month for which coverage was paid.

(ii) **Incoming School:** Employee in the incoming school shall enroll within thirty-one (31) calendar days of hire. Eligible employees and their eligible dependents are eligible for coverage on the first day of the month following enrollment into the plan, subject to receipt of premium payment and the actively-at-work provision. Participating entities shall coordinate the effective date to ensure duplicate premiums are not paid on behalf of the employee through the outgoing school as well as the incoming school.

(4) **Change in Status Enrollment Eligible Dependent.** Where the eligible dependent was receiving employee benefit group coverage through their parent, spouse or other third party and because of a change in status, the eligible dependent lost the coverage provided by the

parent, spouse or other third party, the eligible employee having coverage under the particular line of coverage from the authority shall enroll the eligible dependent within thirty-one (31) calendar days of a change in status. Any eligible employee claiming dependent loss of coverage, shall be responsible for submitting supporting documentation indicating the reasons coverage was terminated, the date coverage was terminated, a list of who was covered, and what types of coverages his/her dependents had. Supporting documentation must be provided with the enrollment application within thirty-one (31) calendar days of a change in status.

(5) Change in Status Enrollment/Eligible Employee. When the eligible employee was receiving employee benefit group coverage through their spouse or other third party and because of a change in status of the spouse or other third party, the eligible employee lost the coverage provided by the spouse or other third party, the eligible employee shall enroll within thirty one (31) calendar days of the date of the change of status for the line or line(s) of coverage the eligible employee lost. Supporting documentation must be provided with the enrollment application.

(6) Eligible Employee Late Enrollment. Any eligible employee seeking enrollment after the enrollment period, new eligible employee enrollment or change in status enrollment shall be permitted to enroll only in the group medical insurance health plan. Late enrollments shall not be permitted for dental or vision coverages, or for any other line of coverage except during an established enrollment period. Late entrants are permitted to enroll in the authority's long-term disability plan and the voluntary life insurance plan upon providing the required evidence of medical insurability.

(7) Requirement for Eligible Dependent Coverage, Exception for Divorce. If an eligible employee participant obtains dependent coverage for any eligible dependent from the authority, then the employee is required to enroll all eligible dependents in such coverage. If an eligible employee participant is divorced, and the divorce decree states that medical coverage will be provided by the ex-spouse for one or more dependents of the eligible employee participant, the employee is permitted to enroll as a single in the medical and in the two party or family coverage of other lines.

(8) Prohibition against Duplicate Coverage. An employee is prohibited from having duplicate coverage from the authority for any line of coverage. An employee is also prohibited from having employee coverage and dependent coverage at the same time from the authority for any line of coverage. In the event of duplicate

coverage, only one benefit will be paid. In those cases where an employee and his or her spouse or domestic partner are both eligible employees, either one may enroll into the coverage and the other be treated as an eligible dependent.

(9) Participation Requirements for Eligible Employee Enrollment. An eligible employee is not permitted to enroll for a particular line of coverage unless the minimum participation level as determined by the authority is met.

(10) Switching Coverage. The participant shall only be permitted to switch from one plan to another plan within the same line of coverage during an established switch enrollment period and then only under the terms and conditions permitted by the authority.

(11) Dropping Coverage. An employee may drop any line of coverage at any time at the employee's discretion. Provided, however, any negotiated provision with respect to prohibition against dropping any lines of coverage shall be enforced. In divorce situations, a divorced eligible employee may not drop eligible dependents based on a change in status until a divorce decree is filed with the authority. When a domestic partnership is terminated, the employee, ex-domestic partner may not drop eligible dependents based on a change in status until the authority receives written notice that the domestic partnership is terminated in the form of an affidavit terminating domestic partnership. If the employee drops the line of coverage(s), the employee cannot re-enroll except as this part permits.

(12) Proper Documentation. Proper documentation, including evidence of medical insurability where required, must be provided by the eligible employee seeking coverage within thirty-one (31) calendar days of the qualifying event. Coverage may be rejected where adequate proof and documentation satisfactory to the authority is not submitted in a timely manner.

B. Eligible Employee Dependent Enrollment

(1) Eligible Employee Dependent Enrollment Period. When established enrollment is provided for by the authority, the eligible employee participants may enroll their eligible dependents during the established enrollment period. If the employee is enrolled in family medical coverage, a newborn dependent of an employee parent is covered from the date of birth under the lines of family coverage in which the employee parent is enrolled at the time of the newborn's birth. In cases where the employee is not enrolled in family medical coverage but has family coverage for other lines of employee benefits, the employee parent must enroll the newborn

dependent within thirty-one (31) calendar days from the date of birth to be covered from the date of birth. In cases where there is a change of status in premium (i.e., single to two-party, single to family, or two-party to family) due to the addition of a newborn dependent, the employee parent must enroll the newborn dependent within thirty-one (31) calendar days from the date of birth to be covered from the date of birth. Under ~~[8.2.1 of this Chapter]~~ Paragraph (1) of Subsection B of 6.50.10.8 NMAC, a copy of the official state publicly filed birth certificate or a state-filed birth certificate registration certification must accompany the enrollment form, or if not available must be submitted within sixty-one (61) calendar days from the first day of the month following the newborn dependent's date of birth. Adopted dependents of an employee are eligible for coverage from the date of placement by a licensed state agency, a governmental agency or a court of competent jurisdiction. Supportive documentation of such placement is required with the change of status application within thirty-one (31) calendar days of the date of placement.

(2) New Eligible Dependent Enrollment. The employee participant shall enroll the new eligible dependent within thirty-one (31) calendar days of becoming an eligible dependent, except for newborns when family medical coverage is in effect at the time of the newborn's birth, as under ~~[8.2.1 of this Chapter]~~ Paragraph (1) of Subsection B of 6.50.10.8 NMAC. Those persons considered to be a new eligible dependent are a newborn child, a new spouse, a domestic partner newly established by affidavit, a new legally adopted child, legal guardianship and other similar situations where the dependent becomes a new family member and is otherwise an eligible dependent ~~[under this Chapter]~~. Supportive documentation in the form of copies of publicly filed marriage certificates, birth certificates, guardianships, placement or adoption decrees and affidavits of domestic partnership shall be submitted along with the enrollment application.

~~[(3) Re-enrollment of Eligible Dependent Student.~~ In those situations in which the eligible employee maintains dependent coverage on an eligible dependent child and the child student loses coverage because the child no longer qualifies as a full-time student and at some later time the child again becomes a full-time student and the student otherwise qualifies as an eligible dependent, the child may re-enroll as an eligible dependent. Employee notification of dependent student status shall be provided along with proof of full-time enrollment in the form of an official notice from the school indicating full-time status within thirty-one (31) calendar days of this

~~change in status provided that the eligible employee has maintained dependent coverage on the remaining eligible dependents. Coverage shall be effective the first day of the month following receipt of a completed application and supporting documentation.]~~

~~[(4)] (3) **Late Enrollment of Eligible Dependents.**~~ Any eligible employee participant seeking enrollment for an eligible dependent after an established enrollment period, new eligible employee enrollment, new eligible dependent enrollment or change of status enrollment shall be permitted to enroll such eligible dependent only in the medical insurance plan. Enrollment in the medical coverage after the open enrollment, new eligible employee enrollment, new eligible dependent enrollment or change of status enrollment is allowed pursuant to ~~[7-28 of Part 4]~~ Subsection GG of 6.50.1 NMAC. Late enrollment shall not be permitted for dental or vision plans except during an established period. Late enrollment is permitted in the authority voluntary life insurance plan upon providing the required evidence of medical insurability.

~~[(5)] (4) **Dependent Has No Greater Coverage Than Covered Employee.**~~ The eligible dependent has no greater coverage than the eligible employee participant and the eligible dependent can maintain coverage only to the extent that the eligible employee participant maintains their coverage, except as otherwise specifically provided in this rule or to the extent federal law may grant broader rights. Native American employees or Native American dependents of an employee are allowed to waive medical coverage on the Native American and still enroll in the other lines of coverage offered by the authority.

~~[(6)] (5) **Dropping Coverage.**~~ An eligible employee participant may drop any line of coverage on their eligible dependent at any time at the employee's discretion; provided, however, that if the employee drops the line of coverage, the employee cannot re-enroll the eligible dependent except as this rule permits and provided further that if the employee drops one dependent, the employee must drop coverage on all eligible dependents. In divorce situations, a divorced eligible employee may not drop eligible dependents based on a change in status until a divorce decree is filed with the **authority**. When a domestic partnership is terminated, the employee ex-domestic partner may not drop eligible dependents based on a change in status until the authority receives written notice that the domestic partnership is terminated in the form of an affidavit terminating domestic partnership.

~~[(7)] (6) **Proper Documentation.**~~ Proper documentation (together with application for coverage) including evidence of medical insurability where required, must be provided by the person seeking coverage

within thirty one (31) calendar days of the qualifying event. Coverage may be rejected where adequate proof and documentation satisfactory to the **authority** is not submitted in a timely manner.

C. Grandfathered Retired Employee and Grandfathered Retired Employee Dependent Enrollment.

(1) **Established Enrollment Period.** When an established enrollment period is allowed by the authority, an eligible grandfathered retired employee or grandfathered retired employee dependent may enroll for voluntary life insurance coverage and no other lines of coverage during the established period without evidence of medical insurability.

(2) **New Eligible Grandfathered Retired Employee or Grandfathered Retired Employee Dependent Enrollment.** The eligible retired employee and eligible dependents shall be permitted to enroll during the established enrollment period, or upon showing that the new eligible grandfathered retired employee or grandfathered retired employee dependent was an eligible employee and since retirement maintained continuous authority voluntary life insurance. The retiree shall be responsible for submitting paperwork prior to their retirement date to ensure no break in premium or coverage occurs. The retiree shall be responsible for premium payment for any monthly premiums.

(3) **Established Enrollment Period -- Retired Employee's and Active Participating Entity Board Member's Eligible Dependents.** The established enrollment period allowed by the authority, for the eligible retired employee's eligible dependents and active participating entity board member's eligible dependents is thirty-one (31) calendar days after the retired board member's successor has taken oath or thirty-one (31) calendar days after the retired employees enrollment in retiree health care authority medical plan. In no event shall this provision be construed to expand enrollment privileges beyond the member school district or other educational entity enrollment policy.

D. **Special Events Enrollment.** In cases of "special events" defined in ~~[6 NMAC 50.1.7.54]~~ Subsection HHH of 6.50.1.7 NMAC, enrollment shall be allowed pursuant to ~~[6 NMAC 50.1.7.54]~~ Subsection HHH of 6.50.1.7 NMAC. Enrollees who are enrolled pursuant to a special event and who are subject to a pre-existing condition as defined in ~~[7.42]~~ Subsection VV of 6.50.1.7 NMAC shall not be covered for medical advice, diagnosis, care or treatment of the pre-existing condition or mental condition during the time provided in ~~[7.42 of Part 4]~~ Subsection VV of 6.50.1.7 NMAC.

E. **School District and**

Other Educational Entities Required to Timely Report. Authority insurance providers depend on timely reporting of dismissals, resignations, change in status, reports of new eligible dependents, new enrollments and dropping of coverages. The only source of this information is from the participating entities. They shall report this information on or before the fifteenth day following notification from the employee of the event. In the event they fail to so timely report, the responsible participating entity shall be liable for any losses an eligible employee or dependent may incur as a result of the failure to timely report.

F. **Enrollment and Eligibility Conflict Between Authority Carrier Agreements, Authority Rules and Regulations, Non-HMO Health Insurance Policies, HMO Individual Subscriber Agreements and Member School or Educational Entity Policy or Miscommunications.**

(1) **Carrier Contracts.** As to questions of enrollment and eligibility, in the event there is a conflict between the carrier contract with the authority and this part, the carriers contract will prevail.

(2) **Carrier Contract/School Policy.** As to questions of enrollment and eligibility, in the event there is a conflict between the carrier contract and the participating entity policy, the carrier contract will prevail.

(3) **School District or Other Education Entity Policy.** As to questions of enrollment and eligibility, in the event there is a conflict between the participating entity policy and this part, the part prevails.

(4) **School District or Other Educational Entity Employees.** As to questions of enrollment and eligibility, all disputes between the participating entity and the employee in determining eligibility will be resolved at the participating entity level.

(5) **Miscommunication.** As to questions of enrollment and eligibility, if miscommunication occurred, the participating entity must provide a written statement indicating the party or parties who miscommunicated to the employee.

(6) **Dispute Resolution.** As to questions of enrollment and eligibility, disputes not resolved between the employees, participating entity and the Authority or its contractors shall be ~~submitted to and by the Director of the Authority. Any aggrieved person may within thirty one (31) calendar days of the director's decision, appeal such to the authority board and its decision shall be final.]~~ resolved according to the procedures of 6.50.16 NMAC of these rules.

(7) **Conflicts Not Involving Enrollment and Eligibility.** As to all other conflicts between authority-carrier, administrative services or HMO agreements, the

relevant conflicts provision of such document shall control with regard to conflict resolutions.

[10-31-86, 11-04-88, 03-22-93;05-20-94; 6.50.10.8 NMAC - Rn & A, 6 NMAC

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

This is an amendment to 12.15.3 NMAC Sections 2, 9, 13, and 14 effective 06/30/2004.

12.15.3.2 SCOPE: All persons subject to the Home Loan Protection Act, Sections 58-21A-1 to -14 NMSA 1978 (2003, as amended through 2004) ("Act").
[12.15.3.2 NMAC - N, 01/23/2004, A, 06/30/2004]

12.15.3.9 PUBLISHED ANNUAL YIELD ON CONVENTIONAL MORTGAGES: The phrases "most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor," as used in Section 58-21A-3(E) NMSA 1978, and "conventional mortgage rate" as used in Section 58-21A-3(B) and (F)(1) NMSA 1978, refer to the federal home loan mortgage corporation (freddie mac) national mortgage homeowner commitment index published in the federal reserve "selected interest rates" (statistical release H-15). The creditor must use the most recently published weekly yield immediately preceding the 15th.
[12.15.3.9 NMAC - N, 01/23/2004, A, 06/30/2004]

12.15.3.13 RATE THRESHOLD: The phrase "weekly average yield on comparable United States treasury securities on the fifteenth day of the month immediately preceding the month in which the loan is made," as used in Section 58-21A-3(L) NMSA 1978, refers to the yield on actively traded issues adjusted to constant maturities published in the federal reserve "selected interest rates" (statistical release H-15).

A. Creditors must use the yield corresponding to the constant maturity that is closest to the loan's maturity or the lower yield if the loan's maturity is midway between constant maturities published in the statistical release. For example:

(1) if a mortgage loan has a term of at least 20 but less than 30 years, the rate threshold test uses the yield of securities

having a constant maturity of [~~25~~] 20 years [~~and over~~];

(2) if a mortgage loan has a term of 30 years or more, and if the federal reserve statistical release does not provide a term equal to that same exact term of years, then the rate threshold test uses the yield of securities having a constant maturity of the next shortest fixed term listed in the statistical release:

(~~2~~) (3) if the statistical release H-15 contains a yield for treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the rate threshold test of an 8 year mortgage loan uses the yield of securities having a 7 year constant maturity, and the rate threshold test of a 9 year mortgage loan uses the yield of securities having a 10 year constant maturity;

(~~3~~) (4) if the loan's maturity is exactly halfway between security maturities, the rate threshold test on the loan should be compared with the yield for treasury securities having the lower yield; if a mortgage loan has a term of 15 years, and the statistical release H-15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the rate for a 15 year mortgage loan with the lower yield for constant maturities of 10 years.

B. If the 15th day of the month immediately preceding the month in which the loan is made is not a [~~business day~~] Friday, the creditor must use the yield calculated as of the [~~business day~~] Friday immediately preceding the 15th.

C. A loan is considered "made," within the meaning of Section 58-21A-3(L), NMSA 1978, when the consumer becomes contractually obligated on a credit transaction.

D. When calculating the interest rate for adjustable rate loans, the creditor shall not use any introductory rate. The interest rate will be based on the loan's disclosed index plus the margin, which is the fully indexed rate, at the time the loan is made. As an example, if the index is 2% and the margin is 3% for a first lien mortgage, the interest rate is 5% (fully indexed rate).

[12.15.3.13 NMAC - N, 01/23/2004, A, 06/30/2004]

12.15.3.14 CREDIT PROPERTY INSURANCE: For purposes of the act, the term "credit property insurance," does not include fire and hazard insurance, flood insurance, federal housing administration (FHA) mortgage insurance, veteran's administration (VA) loan guarantees, guaranteed rural housing (GRH) loan guarantees and private mortgage insurance that would compensate the holder of a home loan

directly for any shortfall between the value of the real property securing the loan and the amount owed on an obligation in default.

[12.15.3.14 NMAC - N, 01/23/2004, A, 06/30/2004]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO BOARD OF
VETERINARY MEDICINE****NOTICE OF PUBLIC SUNSET
HEARING FOR THE NEW MEXICO
BOARD OF VETERINARY
MEDICINE**

Pursuant to Article 9, the Sunset Act, Sections 12-9-11 to 12-9-22 NMSA 1978, notice is hereby given that the Legislative Finance Committee's Sunset Review Subcommittee will convene a Sunset Review Hearing on August 9 and 10, 2004 at the State Capitol in Santa Fe, New Mexico. The purpose of the hearing is for the Subcommittee to receive testimony to demonstrate public need for continued existence of agencies and new licensure requests.

Persons desiring to present their views may submit written comments by August 2, 2004 to the Sunset Review Subcommittee in care of Renada Peery, Fiscal Analyst, Legislative Finance Committee, 325 Don Gaspar, Ste. 101, Santa Fe, NM 87503.

Persons wishing to present their comments at the hearing will need to provide a minimum of 20 written copies of their presentation for distribution to the Subcommittee and staff. The agenda is available upon request from the Legislative Finance Committee at (505) 986-4550 or from the Board of Veterinary Medicine at (505) 841-9112. Please check the agenda for the time of hearing for the New Mexico Board of Veterinary Medicine.

If you have questions or if you are an individual with a disability who wishes to attend the hearing, but needs a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to participate, please call Norma Waring at (505) 986-4570 at least 2 weeks prior to the hearing.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submission Deadline	Publication Date
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 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 13
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 14
Issue Number 20	October 15	October 29
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