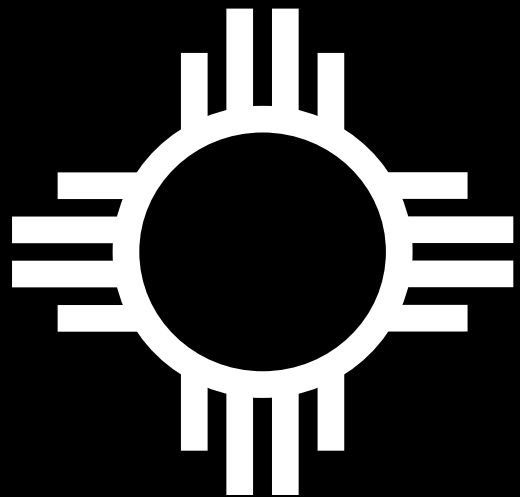


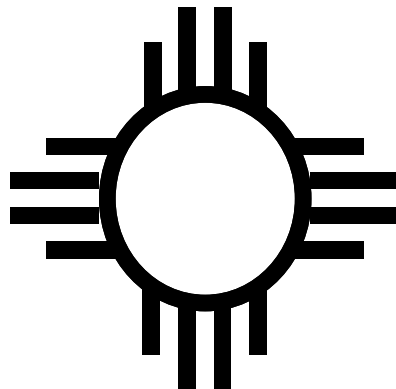
**NEW
MEXICO
REGISTER**



Volume XVI
Issue Number 20
October 31 2005

New Mexico Register

**Volume XVI, Issue Number 20
October 31, 2005**



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

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Santa Fe, New Mexico
2005

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New Mexico Register

Volume XVI, Number 20

October 31, 2005

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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The *New Mexico Register* is available free at <http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT

NOTICE OF PUBLIC RULEMAKING HEARING

The New Mexico Aging and Long-Term Services Department hereby gives notice that a public hearing will be held on **Wednesday, December 7, 2005 at 9:00 a.m. in the Rio Grande Room at the department's offices, 2550 Cerrillos Road, Santa Fe, N.M.**

The purpose of the hearing will be to receive comments on a proposed new rule relating to continuing care communities: 9.2.24 NMAC - Rate and Fee Increases by Continuing Care Communities.

Any person requesting a copy of the proposed rule or wishing to testify at the hearing should contact Andrea Allen by mail at 1015 Tijeras Ave. NW, Suite 200, Albuquerque, NM 87102, by toll-free telephone at 1-866-842-9230, or by e-mail at Andrea.Allen@state.nm.us. Any person wishing to submit written or e-mail comments may do so by submitting them to Ms. Allen on or before the date of the hearing. No written or e-mail comments will be accepted after 5:00 p.m. on the date of the hearing.

Persons requiring special accommodations at the hearing are asked to contact Ms. Allen by November 28, 2005 so that arrangements can be made.

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

NOTICE OF HEARING AND REGULAR MEETING

On December 14, 2005, at 5:15 pm, the Albuquerque-Bernalillo County Air Quality Control Board (Board) will hold a combined public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The purpose of the combined hearing is to repeal and replace 20.11.60 NMAC, Permitting in Nonattainment Areas, and 20.11.61 NMAC, Prevention of Significant Deterioration, to

ensure that the local regulations are consistent with the State of New Mexico's rules and to incorporate revisions mandated by the U.S. Environmental Protection Agency (EPA) for new source review permitting. The Environmental Health Department will also be requesting to incorporate the complete versions of 20.11.60 NMAC and 20.11.61 NMAC into the New Mexico State Implementation Plan for air quality (SIP).

Following the combined hearing, the Board will hold its regular monthly meeting during which the Board is expected to consider repealing and replacing 20.11.60 NMAC, Permitting in Nonattainment Areas, and 20.11.61 NMAC, Prevention of Significant Deterioration, and to incorporate the complete regulations into the SIP.

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

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

Anyone intending to present technical testimony is asked to submit a written notice of intent before 5:00 pm on Wednesday, December 7, 2005 to: Attn: December Hearing Record, Mr. Michael D. Smith, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or in person in Room 3023, 400 Marquette Avenue NW. The notice of intent shall identify the person's name, address and affiliation.

In addition, written comments to be incorporated into the public record should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on December 7, 2005. The comments shall include the name, address and affiliation of the individual or organization submitting the statement. Written com-

ments may also be submitted electronically to mdsmith@cabq.gov and shall include the required name, address and affiliation information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department Office, or by contacting Mr. Michael D. Smith electronically at mdsmith@cabq.gov or by phone at (505) 768-1961.

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

NEW MEXICO ATHLETIC TRAINERS PRACTICE BOARD

Notice is hereby given that the New Mexico Athletic Trainers Practice Board has scheduled a Rule Hearing/ Regular Board Meeting to be held on December 12, 2005, at 10:00 a.m. at the Real Estate Commission, Suite B, 5200 Oakland Avenue, NE Albuquerque, New Mexico. The purpose of this hearing is to hear public testimony and comments regarding the recommended proposed rule changes.

Persons desiring to present their views may appear in person at said time and place or send their written comments to the Board Office at P.O. Box 25101, Santa Fe, NM, 87504. Copies of the proposed changes may be requested by mail or by contacting the Board Office at (505) 476-4610.

The Board may go into closed session during the meeting to discuss licensing and disciplinary matters as permitted by the Open Meetings Act. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the board administrator at (505) 476-4610 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the board administrator if a summary or other type of accessible format is needed.

NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

Public Rule Hearing and Regular Board Meeting

Notice is hereby given that the New Mexico Board of Chiropractic Examiners will convene a public rule hearing at 9:00 a.m. on Friday, December 9, 2005, followed by a regular business meeting during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters. The hearing and meeting will be held at the Regulation and Licensing Department, Toney Anaya Bldg., 2550 Cerrillos Rd., 2nd Floor, Santa Fe, NM.

The purpose of the rule hearing is to consider adoption of proposed amendments to the following Board Rules and Regulations in 16.4 NMAC: Part 1 General Provisions; Part 3 Requirements for Licensure by Examination; Part 4 Licensure by Endorsement; Part 9 License Renewal Procedures; Part 10 Continuing Education; Part 12 Classification of a Chiropractic Licensure; Part 13 Reinstatement of Chiropractic Licensure; Part 17 Supervision of Interns; Part 18 Practice Procedures; and proposed new rules on Disciplinary Proceedings and Provisions for Emergency Licensure.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4695 (30) thirty days prior to the rule hearing. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than November 25, 2005. Persons wishing to present their comments at the hearing will need (9) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4695 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC HEARING TO CONSIDER REPEAL AND REPLACE- MENT OF 20.9.1 NMAC, "SOLID WASTE MANAGEMENT" REGULA- TIONS

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning on January 3, 2006 and continuing thereafter as necessary, at the New Mexico State Capitol Building, Room 317, Santa Fe, NM at 9:30 a.m. The hearing location may change prior to January 3, and those interested in attending should check the EIB website: <http://www.nmenv.state.nm.us/oots/eib.htm> prior to the hearing. The purpose of the hearing is to consider repeal and replacement of the Solid Waste Management regulations, 20.9.1 NMAC. The New Mexico Environment Department is the proponent of the proposed replacement regulation.

The replacement regulation will affect: permitting requirements of landfills and other solid waste facilities; registration requirements for commercial haulers, recycling facilities and composting facilities; operating requirements for solid waste facilities; provisions regarding what waste materials may or may not be disposed at a landfill; handling procedures for asbestos, infectious waste and other special wastes; size limits for collection centers; operating procedures for commercial haulers; groundwater monitoring requirements for solid waste facilities; financial assurance mechanisms for solid waste facilities, composting facilities and recycling facilities; fees for permit and registration applications; and potentially all other provisions of the solid waste management regulations.

The proposed rule changes may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. Copies of the rule changes may be obtained by contacting Barbara Claire at (505) 827-2425 or by email at Barbara.Claire@state.nm.us. Please refer to Docket No. EIB 05-07 (R). The proposed rule changes can also be found on the New Mexico Environment Department website at <http://www.nmenv.state.nm.us/swb/draftregs.htm>. Written comments may be submitted to the Solid Waste Bureau for consideration for inclusion in the final draft if submitted

to the Solid Waste Bureau prior to November 15, 2005. Please address these comments to E. Gifford Stack, Acting Bureau Chief, NMED Solid Waste Bureau, 1190 St. Francis Drive, Santa Fe NM, 87505. In addition, written comments to the EIB regarding the amended and replaced rules may be addressed to Ms. Claire at the above address, and should reference docket number EIB 05-07 (R).

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

The Solid Waste Bureau will submit a final draft of the proposed regulation to the EIB on or before December 15, 2005. The final draft version will also be available at the Environment Department website at <http://www.nmenv.state.nm.us/swb/draftregs.htm>.

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

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

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

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm

on Monday, December 19, 2005, and should reference the name of the rules, the date of the hearing, and docket number EIB 05-07 (R). Notices of intent to present technical testimony should be submitted to:

Barbara Claire
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley by Monday, December 19, 2005. Ms. Bentley can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-9872. TDD or TDY users may access this number via the New Mexico Relay Network 1-800-659-8331.

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

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 December 1, 2005, in the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be Medicare Part D Low Income Subsidy.

The Social Security Administration and the Centers for Medicare and Medicaid Services (CMS) will implement Part D of Medicare effective January 1, 2006. Part D is the Prescription Drug Benefit for all individuals eligible for Medicare. Participation in Part D will cost the enrollee premiums, co-payments, and deductibles. Certain individuals, whose income falls below 150% of the Federal Poverty Level, will be eligible for a Low Income Subsidy (LIS). The LIS will cover the costs of the premiums and the deductibles, along with reduced co-payments for prescription drugs.

Interested persons may submit written comments no later than 5:00 p.m., December 1, 2005, 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 con-

sidered 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, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

OIL CONSERVATION COMMISSION

NOTICE OF RULE MAKING

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION COMMISSION SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission, hereby gives notice that the Commission will conduct a public hearing at 9:00 A.M. on **December 8, 2005**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, concerning adoption of amendments to 19.15.1, 19.15.2 and 19.15.4 NMAC. The proposed amendment to 19.15.1 NMAC will amend paragraphs (4) and (7) of Subsection W of Section 7 to change the definitions of "watercourse" and "wellhead protection area." The proposed amendment to 19.15.2 NMAC will re-write Section 50 (entitled "Pits and Below-Grade Tanks") to, among many other things, (a) require all pits to be lined and (b) require pits to be closed by removal of contents and liners to a division-approved waste management facility, unless the division approves a different closure procedure by exception. The proposed amendment to 19.15.4 NMAC will amend Section 202 to conform the well site clean-up requirements of that section to the requirements of proposed, amended Section 50 of 19.15.2 NMAC and change provisions regarding dry hole markers. Copies of the text of the proposed amendments are available from Commission Secretary, Florene Davidson at (505)-476-3458 or from the Division's web site at

<http://www.emnrd.state.nm.us/ocd/hearings.htm>. Written comments on the proposed amendments must be received no later than 5:00 P.M. on Thursday, December 1, 2005. Proposed alternative amendments submitted by parties other than the division must be received no later than 5:00 P.M. on Wednesday, November 23, 2005. Written comments may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at 476-3462. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Ms. Davidson at (505)-476-3458 or through the New Mexico Relay Network (1-800-659-1779) as soon as possible.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 13th day of October, 2005.

STATE OF NEW MEXICO OIL CONSERVATION DIVISION

Mark E. Fesmire, P.E.
Director, Oil Conservation Division

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Wednesday, December 14, 2005. The meeting will be held during the Board's regular business meeting beginning at 9:00 a.m., located at the Leo Griego Auditorium in the Willie Ortiz Building (State Personnel Office) at 2600 Cerrillos Road, Santa Fe, New Mexico, 87503.

The purpose of the Rule Hearing is to consider amending various SPB Rules and Regulations.

A final agenda for the board meeting will be available at the board office on Tuesday, December 6, 2005.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. Monday, December 5, 2005 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87503, attention, Sandra Perez. Copies of the proposed rules are available on request from the Board office at the address listed above, by

phone (505) 476-7805, or on the Internet at www.state.nm.us/spo/ beginning November 1, 2005.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO
SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF:
THE 2005 ANNUAL TITLE
INSURANCE HEARING**

DOCKET NO. 05-00240-IN

**NOTICE OF HEARING TO CONSIDER
THE PROMULGATION 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 statutory mandate of 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 18, 2005 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 12, 2005**. Objections to motions for leave to intervene shall be filed on or before **Friday, August 19, 2005**.

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 9, 2005**. 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 21, 2005**.

6. Staff and all parties shall file the following items in this docket on or before **Friday, October 21, 2005**:

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, November 4, 2005**:

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 **Wednesday, November 9, 2005**:

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 **Wednesday, November 9, 2005**.

11. No discovery requests or notices of taking deposition shall be served after **Wednesday, November 9, 2005**.

12. A pre-hearing conference shall be held on **Wednesday, November 9, 2005, 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 14, 2005**. 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

ERIC P. SERNA

Superintendent of Insurance

June 9, 2005

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

**BEFORE THE NEW MEXICO
SUPERINTENDENT OF INSURANCE**

**IN THE MATTER OF:
THE 2005 ANNUAL TITLE
INSURANCE HEARING**

DOCKET NO. 05-00240-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 statutory mandate of 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 **Friday, November 18, 2005, 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 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, § 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 14, 2005:**

a) written proposal(s) and an electronic word document version of each proposal. The electronic versions may be filed in the docket on a diskette or e-mailed to Charles.Denton@state.nm.us.

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. Written comments on proposals filed in this docket shall be filed on or before **Friday, October 28, 2005.**

5. 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.

6. 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 **Wednesday, November 9, 2005.**

7. A pre-hearing conference shall be held on **Wednesday, November 9, 2005, 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.

8. 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.

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

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

11. 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 14, 2005. 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.

12. 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.

ERIC P. SERNA
Superintendent of Insurance

June 9, 2005

**NEW MEXICO SPEECH
LANGUAGE PATHOLOGY,
AUDIOLOGY AND
HEARING AID
DISPENSING PRACTICE
BOARD**

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Speech Language Pathology, Audiology and Hearing Aid Dispensing Practice Board will hold a Rule Hearing on December 9, 2005. Following the Rule Hearing the New Mexico Speech Language Pathology, Audiology and Hearing Aid Dispensing Practice Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Speech Language Pathology, Audiology and Hearing Aid Dispensing Practice Board Rule Hearing/Regular Meeting will begin at 9:00 a.m. The meetings will be held at the Regulation and Licensing Department, 5200 Oakland Ave NE, Albuquerque, NM.

The purpose of the rule hearing is to consider adoption of proposed amendments to

the following Board Rules and Regulations in 16.26 NMAC: Part 1 General Provisions, Part 2 Licensure Requirements, Part 3 Application procedures and Qualifications for Licensure, Part 4 Annual Renewal of Licenses, Part 5 Continuing Education, Part 6 Fees, Part 7 Grounds for Disciplinary Action, Part 8 Procedures for Disciplinary Action, Part 9 Code of Ethics, and Part 10 Emergency Licensure.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4890 after November 8, 2005. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than November 14, 2005. Persons wishing to present their comments at the hearing will need (12) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4890 at least two weeks prior to the meeting or as soon as possible.

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

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED AMEND- MENTS TO 20.6.4 NMAC - STAN- DARDS FOR INTERSTATE AND INTRASTATE SURFACE WATERS; NOMINATION OF THE WATERS OF THE VALLE VIDAL AS OUTSTAND- ING NATIONAL RESOURCE WATERS

The State of New Mexico, through its Water Quality Control Commission (Commission), hereby gives notice that the Commission will hold a public hearing following the Commission's regular business meeting on Tuesday, December 13, 2005, at 9:00 a.m., and continuing thereafter as necessary, in the PERA Building, Apodaca

Hall, 2nd Floor, 1120 Paseo de Peralta, Santa Fe, New Mexico concerning proposed amendments to **Standards for Interstate and Intrastate Surface Waters** (20.6.4.9 NMAC).

The New Mexico Department of Game and Fish, New Mexico Environment Department, and New Mexico Energy Minerals and Natural Resources (Petitioners) propose amendments to Subsection D of 20.6.4.9 NMAC to nominate the waters of the United States Forest Service Valle Vidal Management Unit as Outstanding National Resource Waters pursuant to Subsection A of 20.6.4.9 NMAC. The Petitioners filed the proposed amendments with the Commission on October 4, 2005, docketed as WQCC 05-04 (R).

All proposed amendments and other documents related to the hearing may be reviewed during regular business hours in the office of the Commission:

Barbara Claire, WQCC Administrator
Harold Runnels Building, 1190 St. Francis Drive, N2150
Santa Fe, New Mexico, 87502
(505) 827-2425, Fax (505) 827-2836 or
Barbara.Claire@state.nm.us.

The nomination petition has been posted on the Department of Game and Fish webpage at www.wildlife.state.nm.us.

Notices of Intent to present technical testimony during the hearing must be filed with the Commission by 5:00 p.m. on November 22, 2005 and should reference docket number WQCC 05-04 (R).

The hearing will be conducted in accordance with NMSA 1978, Section 74-6-6 of the Water Quality Act; the Guidelines for Water Quality Control Commission Regulation Hearings; and the specific Hearing Guidelines entered by the Hearing Officer appointed for this matter, Felicia Orth. Ms. Orth can be reached by contacting Ms. Claire. A copy of the Guidelines for Water Quality Control Commission Regulation Hearings and the Hearing Guidelines may be obtained from Ms. Claire; they are also available on the Commission's web page at www.nmenv.state.nm.us/wqcc.

Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification is required. A member of the general public may submit a written non-technical statement for the record in lieu of oral testimony at the hearing at any time prior to the close of the hearing.

Written comments on the proposals should be submitted to Ms. Claire on or before

November 25, 2005.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. translator or sign language interpreter, to participate in any aspect of this process, please contact Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by November 28, 2005, at the New Mexico Environment Department, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331. Copies of the proposed amendments will be available in alternative forms, e.g. audiotape, if requested by November 28, 2005.

The Commission may deliberate and rule on the proposed amendments at the close of the hearing.

The proposed amendment follows:
This is an amendment to 20.6.4.9 NMAC, most recently amended May, 2005.

20.6.4.9 OUTSTANDING NATIONAL RESOURCE WATERS:

A. Procedures for nominating an ONRW: Any person may nominate a surface water of the state for designation as an ONRW by filing a petition with the commission pursuant to the *Guidelines for Water Quality Control Commission Regulation Hearings*. A petition to classify a surface water of the state as an ONRW shall include:

(1) a map of the surface water of the state, including the location and proposed upstream and downstream boundaries;

(2) a written statement and evidence based on scientific principles in support of the nomination, including specific reference to one or more the applicable ONRW criteria listed in Subsection B of this section;

(3) water quality data including chemical, physical or biological parameters, if available, to establish a baseline condition for the proposed ONRW;

(4) a discussion of activities that might contribute to the reduction of water quality in the proposed ONRW;

(5) any additional evidence to substantiate such a designation, including a discussion of the economic impact of the designation on the local and regional economy within the state of New Mexico and the benefit to the state; and

(6) affidavit of publication of notice of the petition in a newspaper of general circulation in the affected counties and in a newspaper of general statewide circula-

tion.

B. Criteria for ONRWs:

A surface water of the state, or a portion of a surface water of the state, may be designated as an ONRW where the commission determines that the designation is beneficial to the state of New Mexico, and:

(1) the water is a significant attribute of a state gold medal trout fishery, national or state park, national or state monument, national or state wildlife refuge or designated wilderness area, or is part of a designated wild river under the federal Wild and Scenic Rivers Act; or

(2) the water has exceptional recreational or ecological significance; or

(3) the existing water quality is equal to or better than the numeric criteria for protection of aquatic life uses, recreational uses and human health uses, and the water has not been significantly modified by human activities in a manner that substantially detracts from its value as a natural resource.

C. Pursuant to a petition filed under Subsection A of this section, the commission may classify a surface water of the state or a portion of a surface water of the state as an ONRW if the criteria set out in Subsection B of this section are met.

D. Waters classified as ONRWs: The following waters are classified as ONRWs:

(1) Rio Santa Barbara, including the west, middle and east Forks from their headwaters downstream to the boundary of the Pecos Wilderness[-]; and

(2) the waters within the United States forest service Valle Vidal special management unit including:

(a) Rio Costilla, including Comanche, La Cueva, Fernandez, Chuckwagon, Little Costilla, Holman, Gold, Grassy, LaBelle and Vidal creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal Special Management Unit;

(b) Middle Ponil creek, including the waters of Greenwood Canyon, from their headwaters downstream to the boundary of the Elliott S. Barker wildlife management area;

(c) Shuree lakes;

(d) North Ponil creek, including McCrystal and Seally Canyon creeks, from their headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit; and

(e) Leandro creek from its headwaters downstream to the boundary of the United States forest service Valle Vidal special management unit.

[20.6.4.9 NMAC - Rn, Subsections B, C and D of 20.6.4.8 NMAC, 05-23-05; A, 05-23-05; A, 07-17-05; A, XX-XX-06]

**End of Notices and
Proposed Rules Section**

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Adopted Rules

NEW MEXICO ATHLETIC COMMISSION

This is an emergency amendment to 15.6.13 NMAC, Sections 12 and 13, effective October 11, 2005.

15.6.13.12 HOTEL AND MOTEL TELECASTS:

A. Licensed promoter not required: New Mexico law does not currently require a licensed promoter for closed circuit telecasts of boxing, wrestling, or martial arts event programs provided in-room by hotels or motels.

B. Report and [~~privilege taxes~~] supervisory fees required: Each hotel or motel facility or establishment providing in-room closed circuit telecasts of boxing, wrestling, or martial arts event programs will be responsible for filing a report with the commission within seventy-two (72) hours after each telecast event. The report shall be accompanied by a payment of the appropriate [~~privilege tax~~] supervisory fee due.

[15.6.13.12 NMAC - N, 03-23-2002; A/E, 10-11-2005]

15.6.13.13 PENALTIES FOR FAILURE TO REPORT OR PAY TAXES:

A. Promoter: The commission shall levy a fine on any promoter who fails to file either or both the report and tax payment within the prescribed time frame for any closed circuit telecast of a commission-regulated event in the state of New Mexico.

(1) The commission shall waive the fine if it determines that the promoter was not at fault for the failure to file either or both the report and tax payment with the commission.

(2) Lost or misdirected mail shall not be grounds for waiving the fine.

B. Hotels and motels: The commission shall levy a fine on any hotel or motel facility or establishment that fails to file either or both the report and [~~privilege tax~~] supervisory fee payment within the prescribed time frame for any closed circuit telecast of a commission-regulated event in the state of New Mexico.

(1) The commission shall waive the fine if it determines that the hotel or motel facility or establishment was not at fault for the failure to file either or both the report and tax payment with the commission.

(2) Lost or misdirected mail shall not be grounds for waiving the fine.

[15.6.13.13 NMAC - N, 03-23-2002; A/E, 10-11-2005]

NEW MEXICO ATHLETIC COMMISSION

This is an emergency amendment to 15.6.14 NMAC, Sections 2, 3, 6, 8 and the addition of new Sections 9 through 13, effective October 11, 2005.

15.6.14.2 SCOPE: The provisions in Part 14 of Chapter 6 apply to all persons seeking licensure by the New Mexico athletic commission and provides for a regulatory and supervisory fee.

[15.6.14.2 NMAC - N, 03-23-2002; A/E, 10-11-2005]

15.6.14.3 STATUTORY AUTHORITY: Part 14 of Chapter 6 is promulgated pursuant to the Professional Athletic Competition Act, Sections 60-2A-1 through 60-2A-30 NMSA 1978 (1980 Repl. Pam.); specifically Section 60-2A-4; 60-2A-4; 60-2A-8; 60-2A-9; 60-2A10; 60-2A-11; 60-2A-12, 60-2A-23, 60-2A-24, 60-2A-25, 60-2A-26, 60-2A-27 and 60-2A-28.

[15.6.14.3 NMAC - N, 03-23-2002; A/E, 10-11-2005]

15.6.14.6 OBJECTIVE: The objective of Part 14 of Chapter 6 is to establish the fees to generate sufficient revenues required by the commission to carry out its administrative functions and recover its costs of regulating professional contests and supervising exhibitions.

[15.6.14.6 NMAC - N, 03-23-2002; A/E, 10-11-2005]

15.6.14.8 FEES:

A. All fees are non-refundable.

B. Annual licensing fees are set as follows:

(1) promoters license: **\$250.00**

(2) foreign co-promoters: **\$500.00**

(3) referees: **\$25.00**

(4) timekeeper: **\$25.00**

(5) announcers: **\$25.00**

(6) seconds: **\$25.00**

(7) trainers: **\$25.00**

(8) managers: **\$25.00**

(9) professional boxer: **\$25.00**

(10) professional wrestlers: **\$35.00**

(11) booking agent: **\$35.00**

(12) matchmaker: **\$35.00**

(13) judges: **\$25.00**

(14) judge-trainee: **\$10.00**

C. Regulatory fee: In an amount established semi-annually by the commission sufficient to cover the costs of regulating professional contests, up to four percent (4 %) of the total gross receipts

derived by the promoter from any professional contest conducted live in New Mexico.

D. Supervisory fee: In an amount established semi-annually by the commission sufficient to cover the costs of supervising the exhibition of professional contests on a closed-circuit telecast or motion picture, up to five percent (5 %) of the total gross receipts derived from the exhibition.

[15.6.14.8 NMAC - N, 03-23-2002; A/E, 10-11-2005]

15.6.14.9 REGULATORY FEE:

A. A regulatory fee is imposed upon every promoter for the privilege of promoting a professional contest conducted live in New Mexico. The commission shall at a regular or special meeting for which notice has been duly and properly published, establish the amount of the regulatory fee on a semi-annual basis in an amount sufficient to cover the costs of regulating all professional contests during that period of time. The amount of the regulatory fee shall not exceed four percent (4 %) of the total gross receipts of any professional contest conducted live in New Mexico.

B. In establishing the regulatory fee, the commission shall consider its actual and projected revenues and expenses for the current fiscal year, and during the semi-annual period in question in connection with the regulation of professional contests, as well as historical revenues and expenses of the commission, the number and nature of scheduled and projected professional contests during the semi-annual period, alternate funding that may be available to the commission, historical information bearing upon projected revenues and expenses for the semi-annual period and such other factors as the commission may deem relevant to its determination.

C. As used in this section, "total gross receipts of any professional contest" includes, but is not limited to:

(1) the gross price charged by the promoter for the sale, lease or other exploitation of broadcasting, television or motion picture rights of the professional contest without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;

(2) the face value of all tickets sold and complimentary tickets issued; and

(3) any sums received by the promoter as consideration for holding a professional contest at a particular location.

D. The regulatory fee is non-refundable and is due from the promoter within seventy-two (72) hours after the completion of the professional contest.

E. Any person upon whom the regulatory fee is imposed shall furnish to the commission a written report on forms prescribed by the commission showing:

(1) the number and face value of all tickets sold and complimentary tickets issued for the professional contest;

(2) the amount of total gross receipts generated by the promoter from the professional contest, including the value of all complimentary tickets issued;

(3) the amount of gross receipts derived by the promoter from the sale, lease or other exploitation of broadcasting, motion picture or television rights of the professional contest, without any deductions for commission, brokerage fees, distribution fees, advertising or any other expenses or charges; and

(4) such other matters as the commission may prescribe.

F. The commission or any of its authorized employees may inspect the books, ticket receipts or manifests or any other records necessary for the proper enforcement of the regulatory fee and or the supervisory fee imposed pursuant to the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978).

G. The commission may impose other limitations or conditions as necessary to ensure compliance with the provisions of the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978).

H. The regulatory fee is in addition to any other fees imposed by the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978).

[15.6.14.9 NMAC - N/E, 10-11-2005]

15.6.14.10 SUPERVISORY FEE:

A. A supervisory fee is imposed upon any person who charges and receives an admission fee for the privilege of exhibiting any live professional contest by a "closed-circuit telecast" as defined elsewhere in these regulations. The commission shall at a regular or special meeting for which notice has been duly and properly published, establish the amount of the supervisory fee on a semi-annual basis in an amount sufficient to cover the costs of supervising all such exhibitions during that period of time. The amount of the supervisory fee shall not exceed five percent (5 %) of the gross receipts derived from any such exhibition.

B. In establishing the supervisory fee, the commission shall consider its actual and projected revenues and expenses in connection with the supervision of live professional contest by closed circuit telecast for the current fiscal year, and during the semi-annual period in question, as well as historical revenues and expenses of the commission, the number and nature of

scheduled and projected professional contests that will be telecasted or exhibited during the semi-annual period, alternate funding that may be available to the commission, historical information bearing upon projected revenues and expenses for the semi-annual period and such other factors as the commission may deem relevant to its determination.

C. Any person who charges and receives an admission fee for exhibiting any live professional contest on a closed circuit telecast shall comply with all requirements for closed circuit telecasts contained elsewhere in these regulations.

[15.6.14.10 NMAC - N/E, 10-11-2005]

15.6.14.11 TIME OF PAYMENT OF REGULATORY FEE AND REPORTS:

A. Any person upon whom the regulatory fee is imposed by the Professional Athletic Competition Act (Section 60-2A-23 NMSA 1978) shall, within seventy-two (72) hours after completion of any professional contest for which an admission fee is charged and received or a contribution is requested and received, furnish to the commission a written report, on forms prescribed by the commission, showing:

(1) the number of tickets sold and issued or sold or issued for such professional contest;

(2) the amount of the gross receipts or value thereof;

(3) the amount of gross receipts derived from the sale, lease or other exploitation of broadcasting, motion picture or television rights of such professional contest and without any deductions for commissions, brokerage fees, distribution fees, advertising or any other expenses or charges; and

(4) such other matters as the commission may prescribe.

B. The commission or any of its authorized employees may inspect the books, tickets stubs or any other data necessary for the proper enforcement of the supervisory fee imposed in the Professional Athletic Competition Act (60-2A-1 to 60-2A-30 NMSA 1978).

[15.6.14.11 NMAC - N/E, 10-11-2005]

15.6.14.12 TIME OF PAYMENT OF SUPERVISORY FEE AND REPORTS:

Any person upon whom the supervisory fee is imposed by the Professional Athletic Competition Act (Section 60-2A-26 NMSA 1978) for exhibiting any live professional contest on a closed-circuit telecast or motion picture shall, within seventy-two (72) hours after completion of the event, furnish to the commission a verified written report, on forms prescribed by the commission, showing the

number of tickets or subscriptions sold or the amount of fees collected for the exhibition without any deductions.

[15.6.14.12 NMAC - N/E, 10-11-2005]

15.6.14.13 FAILURE TO COMPLY:

A. Any person who willfully attempts to evade or defeat any regulatory fee or supervisory fee imposed pursuant to the Professional Athletic Competition Act (60-2A-1 to 60-2A-30 NMSA 1978) is guilty of a fourth degree felony.

B. In the case of failure due to negligence or disregard of rules and regulation of the commission, but without intent to defraud, a civil penalty shall be imposed for failure to pay, when due, any amount of the regulatory fee or supervisory fee. A two percent (2 %) per month shall be added to the amount, or a fraction of a month from the date the fee was due or from the date the report was required to be filed, not to exceed ten percent of the fee due.

[15.6.14.13 NMAC - N/E, 10-11-2005]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION

This is an amendment to 19.15.1 NMAC, with the addition of the new Section 36. This amendment is to be effective 10/31/05.

19.15.1.36 COMPULSORY POOLING. SUBSEQUENT OPERATIONS.

A. Definitions. For purposes of 19.15.1.36 NMAC only.

(1) Operator shall mean the division or commission appointed operator of a compulsory pooled proration or spacing unit, or its successor.

(2) Infill well shall mean a well in a compulsory pooled proration or spacing unit to be completed in a pool in which an existing well drilled pursuant to the compulsory pooling order has been completed and not plugged and abandoned.

(3) Pooled working interest shall mean a working interest or unleased mineral interest that is pooled by order of the division or commission and not by voluntary agreement of the owner thereof, except for an unleased mineral interest on federal, state or tribal lands.

B. Subsequent operations. Whenever 19.15.3.104 NMAC or any applicable pool rule authorizes one or more infill wells within a proration or spacing unit pooled by order of the division or the com-

mission pursuant to Section 70-2-17 NMSA 1978, either the operator or any owner of a pooled working interest may, at any time after completion of the initial well provided in the pooling order, propose drilling of an infill well.

C. Proposal by the operator. If the operator proposes an infill well, it shall give notice of such proposal to each pooled working interest owner by certified mail, return receipt requested, specifying the location and depth of the proposed well and including therewith a schedule of estimated well costs and a statement of each pooled working interest owner's gross working interest percentage. Each pooled working interest owner may elect to participate in the proposed infill well by notice in writing to the operator within 30 days after such owner receives the proposal, provided that such election to participate shall not be effective unless the owner so electing pays to the operator the amount of such owner's share of estimated well costs within 30 days after the date of transmission of its notice of election to participate. Any pooled working interest owner not electing to participate in the proposed infill well as above provided shall be deemed to have elected to become a non-consenting owner with respect to the infill well. The operator shall withhold from the proceeds of production of such well accruing to the working interest of any non-consenting owner such non-consenting owner's share of well costs, as defined in 19.15.1.35 NMAC, of such infill well, together with a risk charge computed at the same rate as provided in the pooling order with respect to the initial well. The operator shall distribute the amounts withheld from the non-consenting owner's share of production for well costs and risk charges proportionately to the persons who have advanced the cost of the infill well. Unless it withdraws the proposal the operator shall commence drilling of the proposed infill well no later than 120 days after the expiration of the initial notice period of 30 days. The division director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for such extension, without notice or hearing. If the operator has not commenced drilling within the time provided no election previously made shall be binding on any party. If the operator still desires to drill such infill well, it must resubmit written notice proposing the well as if no prior proposal had been made.

D. Proposal by pooled working interest owner. If a pooled working interest owner proposes an infill well, it shall give written notice of such proposal to the operator by certified mail, return receipt requested, specifying the location and depth of the proposed well and including therewith a schedule of estimated well costs,

The proposing owner shall mail a copy of such proposal to each of the other pooled working interest owners, or their successors in title as identified by documents of record in the office of the clerk of the county where the proposed well will be located, at the same time that it mails such proposal to the operator. The operator shall, within 60 days after receipt of such notice, either propose an infill well at the specified location and depth as an operator proposal pursuant to Subsection C of 19.15.1.36 NMAC, or notify the owner proposing the well that it declines to do so. If the operator proposes the well and less than all working interest owners elect to participate, the operator may withdraw the proposal unless the originally proposing owner, within thirty days of receipt of notice of such occurrence, advances the share of estimated well costs allocable to all non-consenting owners of pooled working interests. If the operator proposes the well and (1) all owners consent thereto or (2) the originally proposing owner advances the share of well costs allocable to any otherwise unsubscribed interest, the operator shall commence drilling the proposed infill well within 120 days after it receives notice that either such condition has occurred. The division director may extend the time for commencement of drilling once for not more than an additional 120 days, upon showing of good cause for such extension, without notice or hearing. Well costs applicable to any non-consenting owner of a pooled working interest, together with the risk charge provided in the original pooling order, shall be recoverable out of the non-consenting owner's share of production as in other cases. If the operator declines to propose a well proposed to it by a pooled working interest owner, or fails to commence such well within the time provided, the proposing owner may apply to the division for an order authorizing the drilling of the proposed infill well under the terms of the compulsory pooling order. The owner filing such application shall give notice thereof as provided in 19.15.14.1210 NMAC to all owners of working interests in the proration or spacing unit, including those whose interests in the proration or spacing unit are pooled by agreement, and, if the proration or spacing unit includes federal or state minerals, to the United States bureau of land management and the state land office, as applicable.

E. Refund of money advanced. If the operator does not commence an infill well proposed pursuant to 19.15.1.36 NMAC within the time provided, including any extension allowed by the division, it shall refund any amounts it has received from any pooled party as advance payment of well costs for such well within 10 days after the expiration of the time provided for commencement of drilling,

together with interest thereon calculated at the rate of bank of America prime plus three percentage points.

E. Determination of reasonable costs. The provision of the applicable compulsory pooling order regarding reporting of actual well costs to the division and to pooled working interest owners, opportunity for objections thereto, determinations of reasonableness of well costs and adjustment of the amount paid to any participating pooled working interest owner to reflect reasonable well costs shall apply to any well drilled pursuant to 19.15.1.36 NMAC.

[19.15.1.36 NMAC - N, 10/31/05]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

Explanatory Paragraph: This is an amendment to 7.6.2 NMAC, Section 8, specifically Subsection K with regard to Permit Fees. The context of the amendment is to increase the permit fee for all food establishments annually in the amount of \$25.00 for a period of four years. The amendment is in accordance with the Food Service Sanitation Act, which provides for permit fees to increase by \$25.00 each year from the current \$100.00 fee with a cap of \$200.00 after four years. The amendment will be effective 12/01/05. Persons affected will be all permittees of food establishments, but does not include permittees of temporary food establishments, as defined by these regulations, and those food establishments that provide food to the general public at no charge. Permit fees will affect all permittees equally statewide. The effect of the permit increase will be more money for the Field Operations Division of the New Mexico Environment Department for the purposes of additional staff, more frequent inspections and training on bioterrorism and emergency preparedness. The full text of 7.6.2 NMAC may be found on NMED's website:

http://www.nmenv.state.nm.us/fod/Food_Program/regulations.html

7.6.2.8 GENERAL PROVISIONS AND PROCEDURES:

...

K. Permit Fees:

(1) Except as provided in Paragraph (2) of Subsection K of 7.6.2.8 NMAC permit fees shall be:

(a) twenty-five dollars (\$25.00) for a temporary food service establishment; and

(b) [~~one hundred dollars (\$100.00)~~] one hundred twenty five dollars

(\$125.00) per year as of December 1, 2005 for all other food establishments:

<u>1, 2006</u>	<u>(i) effective December \$150.00</u>
<u>1, 2007</u>	<u>(ii) effective December \$175.00</u>
<u>1, 2008</u>	<u>(iii) effective December \$200.00</u>

(2) The fee established by Paragraph (1) of Subsection K of 7.6.2.8 NMAC shall be waived for:

(a) any temporary food establishment:

(i) serving only non-potentially hazardous food; or

(ii) operating no more than two (2) consecutive calendar days at an event;

(b) any food establishment that provides food to the general public at no charge.

(3) No discount or refund shall be made for partial years or for permit suspension, revocation or denial in accordance with Subsections B, C, or D of 7.6.2.8 NMAC. After permit revocation, the full fee must be paid for a new permit.

(4) For new food establishments and temporary food service establishments, including permits for new permittees, new locations, or new events, permit fees shall be paid when the application for permit is submitted and shall be verified by the health authority before the permit is issued.

(5) Payments shall be accompanied by submittal forms available from the health authority.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

This is an emergency amendment to 2.40.2 NMAC, Sections 2, 7, 8, 9, 11 and 14, effective October 17, 2005.

2.40.2.2 SCOPE:

A. The contracts review bureau of the department of finance and administration shall review and approve all professional services contracts which result in expenditures equal to or greater than five thousand dollars (\$5,000), [excluding] including applicable gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of Section 2.40.2.2 NMAC of this rule. Contracts expending public funds in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

B. The following state agencies are currently exempt from submitting professional services contracts and

amendments through the contracts review bureau of the department of finance and administration:

(1) state agencies within the judicial branch of government as defined by the New Mexico Constitution, Article VI;

(2) state agencies within the legislative branch of government as defined by the New Mexico Constitution, Article IV;

(3) state educational institutions as defined by the New Mexico Constitution, Article XII, Section 11 and Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978;

(4) the state fair pursuant to Section 16-6-8 NMSA 1978;

(5) the New Mexico public school insurance authority pursuant to Sections 22-29-6 (F) and 22-29-8 NMSA 1978 for contracts for procuring goods or services and paying for insurance or insurance-related services;

(6) the New Mexico mortgage finance authority pursuant to Section 58-18-20 NMSA 1978;

(7) the livestock board pursuant to Section 77-2-10 NMSA 1978; and

(8) other state agencies exempt by statute.

C. Pursuant to Section 6-5-9 NMSA 1978, the secretary of the department of finance and administration may exempt a state agency's contracts from contracts review bureau review and approval when the secretary of the department of finance and administration determines that efficiency or economy so requires. A state agency seeking an exemption must:

(1) apply in writing to the secretary of the department of finance and administration; and

(2) meet all of the following requirements:

(a) issue its own warrants;

(b) be exempt from prior submission of vouchers or purchase orders to the financial control division of the department of finance and administration;

(c) receive the majority of its money from non-general fund sources;

(d) maintain pre-audit and post-audit fiscal accounting controls;

(e) maintain and operate its own administrative unit for procurement and controls its own encumbrance of funds available for professional service contracts;

(f) provide administrative control and review of professional services contracts through its own administrative unit; and

(g) employs in-house counsel to prepare, review, and approve professional services contracts for form and legal sufficiency and to advise the state agency with respect to all applicable laws and regulations; provided, however, that the attorney general shall also review and approve all

contracts subject to Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this rule prior to approval and execution by the state agency.

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 7-1-01; 2.40.2.2 NMAC - Rn & A, 2 NMAC 40.2.2, 1-14-2005; A, 9-15-2005; A/E, 10-17-2005]

2.40.2.7 DEFINITIONS:

A. "Bureau" means the contracts review bureau of the administrative services division of the department of finance and administration.

B. "Contract" means any agreement for the provision of professional services.

C. "Contract brief" means the bureau paper form or electronic version which shall accompany all professional services contracts and amendments submitted to the bureau.

D. "Contractor" as defined in Section 13-1-43 NMSA 1978 means any business having a contract with a state agency.

E. "Department or DFA" means the department of finance and administration.

F. "Form" means, at a minimum, that all contracts and amendments contain the provisions required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

G. "Legal sufficiency" means, at a minimum, that all contracts and amendments contain the provisions required by law and that all required signatures have been obtained.

H. "Procurement" as defined by Section 13-1-74 NMSA 1978 means purchasing, renting, leasing, lease purchasing or otherwise acquiring items of personal property, services or construction and includes all procurement functions, including but not limited to, preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of the contract, and contract administration.

I. "Procurement Code" means Sections 13-1-28 to 13-1-199 NMSA 1978, as amended.

J. "Professional services" as defined by Section 13-1-76 NMSA 1978 means the services of architects, archaeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public

accountants, lawyers, psychologists, planners, researchers, and persons or businesses providing similar services, [~~except information system resources professional services as defined by Paragraph (2) of Subsection B of GSD Rule 1.4.1.7 NMAC.~~] including information system resources professional services.

K. "Regulation" as defined by Section 13-1-80 NMSA 1978 means any rule, order, statement or policy, as amended, issued by a state agency or a local public body that affects persons not members or employees of the issuer.

L. "Retroactive approval to a contract or a contract amendment" means approval of a contract or contract amendment that was submitted to the bureau and approved by the DFA secretary or his designee pursuant to 2.40.2.13 NMAC of this rule after the contractor has begun work pursuant to a request to perform work from a state agency employee or public officer with authority to make such a request.

M. "DFA secretary" means the secretary of the department of finance and administration.

N. "Sole source contract or amendment to sole source contract" means a contract or amendment which fulfills the requirements of Sections 13-1-118 and 13-1-126 NMSA 1978, as amended.

O. "State agency" means any department, agency, commission, council, board, advisory board, committee, or institution of the state of New Mexico, and does not include local public bodies. [7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98; 2.40.2.7 NMAC - Rn & A, 2 NMAC 40.2.7, 1-14-2005; A/E, 10-17-2005]

2.40.2.8 DELEGATION OF APPROVAL AUTHORITY:

A. The bureau shall review all contracts and contract amendments for professional services with state agencies as to form, and budgetary requirements.

B. The bureau shall consult with the department's legal counsel as needed regarding any issues of legal sufficiency of a state agency's contracts and contract amendments for professional services.

C. The DFA secretary shall delegate, in writing to certain members of the bureau, the authority to approve professional services contracts which result in expenditures equal to or greater than [~~five hundred dollars (\$1500), excluding~~] five thousand dollars (\$5,000), including gross receipts tax, and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein. [7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89,

5-15-97, 6-15-98, 7-1-01; 2.40.2.8 NMAC - Rn & A, 2 NMAC 40.2.8, 1-14-2005; A/E, 10-17-2005]

2.40.2.9 FORM AND SUBMISSION:

A. All contracts and subsequent amendments shall be in a form and contain such provisions as required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

B. All contracts and amendments shall:

(1) be accompanied by a contract brief being in such form and containing such information as may be required by the bureau;

(2) be accompanied by a document prescribed by the financial control division of the department showing that funds have been encumbered to the extent of the contract, including any amendments to that contract; if the contract term includes more than one fiscal year, the contract must be accompanied by an encumbrance for the current fiscal year amount or, up to the total amount of the current appropriation available for that contract;

(3) be accompanied by a written request for approval from the secretary of the contracting state agency or his designee if the contract is subject to Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this rule; and

(4) comply with [~~Procurement Code regulations, GSD Rule 1.4.1 NMAC and subsequent regulations~~] New Mexico law regarding indemnification and insurance.

[7-1-76, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98; 2.40.2.9 NMAC - Rn & A, 2 NMAC 40.2.9, 1-14-2005, A/E, 10-17-2005]

2.40.2.11 SMALL PURCHASES:

A contract for professional services having a value over five thousand dollars (\$5,000) including applicable gross receipts taxes, but not exceeding thirty thousand dollars (\$30,000) excluding applicable gross receipts taxes, except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-99 NMSA 1978.

[7-10-85, 7-1-87, 5-15-97, 6-15-98, 7-1-01; 2.40.2.11 NMAC - Rn & A, 2 NMAC 40.2.11, 1-14-2005; A, 9-15-2005, A/E, 10-17-2005]

2.40.2.14 EMERGENCY PROCUREMENT: An emergency procurement of professional services may be made under the conditions provided in the Procurement Code [~~and 1.4.1 NMAC or subsequent GSD regulations~~]. Records of any emergency procurement of professional services, including the written determination of the basis for the emergency procurement being relied on by the state agency as justification for the emergency procurement, shall be maintained by the state agency for a minimum of three years and shall be made available by the state agency to the financial control division upon request.

[7-10-85, 7-1-87, 5-15-97, 6-15-98; 2.40.2.14 NMAC - Rn, 2 NMAC 40.2.14, 1-14-2005; A/E, 10-17-2005]

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 19 N A T U R A L RESOURCES AND WILDLIFE CHAPTER 34 WILDLIFE HABITAT AND LANDS PART 7 PRIVATE LAND ENTRY AND SPORTSMEN ENJOYMENT PROGRAM

19.34.7.1 ISSUING AGENCY: New Mexico Department of Game and Fish.

[19.34.7.1 NMAC - N, 10-31-2005]

19.34.7.2 SCOPE: General public.

[19.34.7.2 NMAC - N, 10-31-2005]

19.34.7.3 STATUTORY AUTHORITY: Sections 17-1-1, 17-1-2, 17-1-5.1, 17-1-14, 17-1-26, and 17-4-1 NMSA 1978, provide the New Mexico state game commission with the authority to lease lands for game management and wildlife habitat as well as acquire properties for hunting grounds. Also, to provide for use of game and fish for use and development for public recreation, and to establish rules and regulations that it may deem necessary to carry out the purposes of Chapter 17, NMSA 1978.

[19.34.7.3 NMAC -N, 10-31-2005]

19.34.7.4 DURATION: Permanent.

[19.34.7.4 NMAC - N, 10-31-2005]

19.34.7.5 EFFECTIVE DATE: October 31, 2005, unless a later date is cited at the end of a section.

[19.34.7.5 NMAC - N, 10-31-2005]

19.34.7.6 OBJECTIVE: To establish fees, and other rules for accessing

private lands for recreational uses like hunting, fishing, trapping & other endeavors. [19.34.7.6 NMAC - N, 10-31-2005]

19.34.7.7 DEFINITIONS:

A. "Commission" shall mean the New Mexico state game commission.

B. "Director" shall mean the director of the New Mexico department of game and fish.

C. "Department" shall mean the New Mexico department of game and fish.

D. "Private Land Entry And Sportsmen Enjoyment" (PLEASE) shall mean a program of the department to provide hunters, anglers, trappers and other wildlife associated recreationists with increased access to recreational endeavors on and through private lands not previously open to public entry.

[19.34.7.7 NMAC - N, 10-31-2005]

19.34.7.8 CONSERVATION & ACCESS FEE:

On or after April 1, 2006 each resident and nonresident license or permit shall include a \$1.00 PLEASE conservation and access fee. No resident and nonresident license or permit shall be considered to be a proper and valid license unless the licensee can demonstrate, by a stamp, check-off or other official mark, that the fee for conservation and access has been paid, provided that an individual purchaser shall be required to pay for only one conservation and access fee each license year, regardless of the number of licenses or permits purchased by the licensee.

[19.34.7.8 NMAC - N, 10-31-2005]

19.34.7.9 PROHIBITION OF DISCRIMINATION:

If otherwise qualified as stated above, no one shall be denied use of leased private lands on the basis of race, color, religion, sex or national origin.

[19.34.7.9 NMAC - N, 10-31-2005]

19.34.7.10 ACCESS AGREEMENTS FOR PRIVATE LAND ENTRY AND SPORTSMEN ENJOYMENT PROGRAM:

A. The director may from time to time enter into access agreements with private landowners so hunting, fishing, trapping or other recreational endeavors may take place. Such access agreements shall include the name of the landowner, map of the property, the permitted uses, responsibilities of the landowner and department, term, dollar amount, liability clauses for the department and landowner, and signatures of the director, landowner and department of finance and administration designee.

B. Upon approval of the access agreement, on a form approved by

the director and subject to any designated fair and impartial selection process, in consideration for access rights granted by the landowner, the landowner shall be paid a fee not to exceed \$1.00 per acre of property per year or a fee approved by the director consistent with the opportunities provided and consistent with state purchasing constraints.

[19.34.7.10 NMAC - N, 10-31-2005]

HISTORY OF 19.34.7 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.3 NMAC, Section 11, effective 10-31-2005.

19.31.3.11 RESTRICTIONS:

A. **One license per big game species per year:** It shall be unlawful for anyone to hold more than one permit or license for any one big game species during the current license year unless otherwise allowed by rule.

B. **Valid dates of license or permit:** All permits or licenses shall be valid only for the specified dates, legal sporting arms, bag limit and area. Except that a permit or license will be valid on the contiguous deeded land of private property that extends into an adjacent GMU or AMU, that is open to hunting for that species, when the license holder is in possession of current, valid written permission from the appropriate landowner. This exception shall only apply when the adjacent unit has the same restrictions as to weapon type, bag limit, season dates and license availability.

C. **Rocky Mountain bighorn sheep - once-in-a-lifetime hunts:** It shall be unlawful for anyone to apply for a Rocky Mountain bighorn sheep license if one has previously held a license to hunt Rocky Mountain bighorn sheep in New Mexico, including the youth-only bighorn hunt. However, a person that has received the youth-only license is allowed to apply for the regular once-in-a lifetime bighorn hunts as long as they are eligible. Exception: An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he/she has previously held a license to hunt Rocky Mountain or desert bighorn sheep in New Mexico.

D. **Desert bighorn sheep - once-in-a-lifetime:** It shall be unlawful for anyone to apply for a desert mountain bighorn sheep license if one has previously held a license to hunt desert mountain bighorn sheep in New Mexico. Exception:

An applicant is eligible to submit a bid for the special bighorn auction and raffle licenses whether or not he/she has previously held a license to hunt Rocky Mountain or desert bighorn sheep in New Mexico.

E. [RESERVED]

F. **Ibex - once-in-a-lifetime:** It shall be unlawful for anyone to apply for a once in a lifetime ibex license if he/she ever held a once in a lifetime license to hunt ibex. Youth ibex hunts, year-round off-mountain hunts, and hunts for female or immature (FIM) ibex, as designated in 19.31.8 NMAC, are not once-in-a-lifetime hunts.

G. **Oryx - once-in-a-lifetime:** It shall be unlawful, beginning April 1, 1993, for anyone to apply for an oryx license if he/she ever held a "once-in-a-lifetime" license to hunt oryx. Exception: Depredation population reduction oryx hunts, youth oryx hunts and incentive hunts are not once-in-a-lifetime hunts.

H. **Valle Vidal (as described in Subsection A of 19.30.4.11 NMAC):**

(1) It shall be unlawful for anyone to apply for a license to hunt bull elk on the Valle Vidal if he/she has ever held a license allowing them to take a bull elk on the Valle Vidal since 1983. This restriction applies to all licenses valid for a bag limit of mature bull (MB), either sex (ES) or mature bull/antlerless (MB/A). It shall be unlawful for anyone to apply for a license to hunt antlerless elk on the Valle Vidal if he/she has ever held a Valle Vidal elk license valid for a bag limit of antlerless since 1983. Either sex (ES) or mature bull/antlerless (MB/A) shall not be considered as an "antlerless" license for this restriction. Persons who have held a Valle Vidal elk license through any incentive program are exempt from this restriction.

(2) It shall be unlawful to hunt bear on the Valle Vidal except for properly licensed bear hunters that possess a Valle Vidal elk hunting muzzleloader, bow, or rifle license and only during the dates of the elk hunt specified. Use of dogs shall not be allowed for bear hunting on the Valle Vidal.

I. **Transfer of permits or licenses:** ~~[It shall be unlawful to transfer permits or licenses to other persons, areas, or other hunt periods except as permitted by regulation adopted by the state game commission.]~~ The director may grant the transfer of a hunting license or permit once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has; died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting. When a transfer of a license results in a higher license fee due

to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit.

J. ~~[Refunds will not be made for any license or permit after it has been awarded or issued except as permitted by regulation adopted by the state game commission.]~~ **Refunds: The director may grant the refund of a hunting license once it has been determined that a licensee or their official representative provides written, verifiable information indicating the licensee has: died, sustained an injury or life-threatening illness, or has been subject to deployment by the United States military that prohibits the licensee from hunting.**

K. Donation of permits or licenses: Upon written request from a licensee or their official representative, the director may grant the donation of a hunting license for transfer to a person who has been qualified through a non-profit wish-granting organization. The donor of the license shall not be eligible for a refund of license or application fees. When a transfer of a license results in a higher license fee due to differences between the original licensee and the new licensee (age, residency, etc.), the difference shall be paid prior to issuance of a license or permit. The state game commission must approve any nonprofit wish-granting organizations that identify and submit recipients for donated licenses or permits.

[K-] L. More than one application: It shall be unlawful to submit more than one application per species for any license issued through a special drawing, unless otherwise permitted by regulation. Exception: An individual may apply for both a population reduction hunt on public or private land and a special drawing hunt. However, an applicant shall follow the application procedures outlined in 19.31.3.8 NMAC.

[L-] M. Deer hunts: It shall be unlawful for any person who is issued a deer hunting permit:

(1) to hunt with any sporting arms type other than that for which his/her deer permit is validated;

(2) to hunt during any season other than that for which his/her deer permit is validated;

(3) to hunt in any GMU other than that for which his/her deer permit is validated;

(4) to hunt deer on public land in any GMU with a private land deer permit, except in conjunction with this subsection, if it is on state land where there is a valid agreement for unitizing state leased and privately owned or leased lands; or

(5) to hunt private property with-

out possessing a valid deer permit, the proper deer license and written permission.

[M-] N. Handicapped fishing or handicapped general hunting license qualifications: To hold a handicapped fishing or handicapped general hunting license, the individual must be a resident of New Mexico and must show proof of a severe disability by reason of one or more physical disabilities resulting from amputation, arthritis, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, muscular dystrophy, musculoskeletal disorders, neurological disorders, paraplegia, quadriplegia and other spinal cord conditions, sickle cell anemia, and end-stage renal disease, or who has a combination of permanent disabilities which cause comparable substantial functional limitation. Reasonable accommodation will be made, relating to these licenses, upon request.

[N-] O. Mobility impaired (MI) deer, elk or antelope license qualifications: To hold a mobility impaired deer, elk or antelope license, a person must submit verifiable documentation on the proper department form that is attested to by a certified medical physician that the individual has a mobility restriction which limits their activity to a walker, wheelchair, or two crutches, or severely restricts the movement in both arms or who has a combination of permanent disabilities which cause comparable substantial functional limitation and then obtain department approval for MI hunt eligibility.

(1) Every person qualified as MI shall have their card/eligibility expire 48 months from the department's approval date or issuance date, whichever is later, and must resubmit their application and obtain department approval as required above prior to being eligible to apply for any MI hunt.

(2) All current MI card holders shall have their card expire on March 15, 2007 and must resubmit on the proper department form and obtain department approval prior to being eligible to apply for MI designated hunt codes.

[O-] P. One deer permit per year: It shall be unlawful for anyone to hold more than one deer permit during the current license year.

[P-] Q. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. Applicant for firearm hunts must provide hunter education certificate number on application.

[Q-] R. Bear entry hunt: It shall be unlawful to hunt bear in designated wildlife areas without having a valid bear entry permit and a valid license in the hunter's possession. Bear entry hunters shall be allowed to hunt any other bear hunt

provided they have a valid license and tag.

[R-] S. An individual making license application shall supply the department on the appropriate form with all required personal information including, but not limited to name, address, date-of-birth, last four digits of his/her social security number prior to an application form being processed or a license being awarded.

[S-] T. It shall be unlawful to hunt pheasant in Valencia county without possessing a valid pheasant permit, the proper license and written permission.

(1) **Exception:** A hunter with a Valencia county pheasant north hunt or south hunt area permit is not required to have written permission for these specific hunt areas.

(2) It is unlawful for a hunter that successfully draws a Valencia county pheasant north hunt or south hunt to hunt any other area or property outside of the designated hunt area in Valencia county that same season.

[T-] U. GMU 4 and 5A private land only hunts: Deer hunt applicants in GMUs 4 and 5A must obtain a special application from landowner. GMU 4 and 5A landowners may be required to provide proof of land ownership to obtain special application forms.

[U-] V. Military only hunts: Applicants must be full time active military and proof of military status must accompany application.

[19.31.3.11 NMAC - Rp, 19.31.3.11 NMAC, 12-30-04; A, 6-30-05; A, 9-30-05; A, 10-31-2005]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.8 NMAC, Sections 5, 10 through 17, which will be effective on November 1, 2005. The Medical Assistance Division amended the sections to include new language regarding the licensed professional art therapist and updated language regarding clinical nurse specialists; added Children, Youth and Families as a provider type; updated language regarding covered and non-covered conditions; updated language regarding medical necessity; and made grammatical and clarification changes.

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

[2/1/95; 8.310.8.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 11/1/04; A, 11/1/05]

8.310.8.10 ELIGIBLE PROVIDERS:

A. Upon approval of New Mexico medical assistance program provider participation agreements by MAD, the following independent providers are eligible to be reimbursed for providing mental health professional services:

- (1) individuals licensed as physicians by the board of medical examiners or board of osteopathy and who are board-eligible or board-certified in psychiatry, or the groups they form;
- (2) psychologists (Ph.D., Psy.D. or Ed.D.) licensed as clinical psychologists by the New Mexico board of psychologist examiners, or the groups they form;
- (3) licensed independent social workers (LISW) licensed by the New Mexico board of social work examiners, or the groups they form;
- (4) licensed professional clinical mental health counselors (LPCC) licensed by the New Mexico counseling and therapy practice board, or the groups they form;
- (5) licensed marriage and family therapists (LMFT) who are licensed by the New Mexico counseling and therapy practice board, or the groups they form; and
- (6) clinical nurse specialists certified in psychiatric nursing by a national nursing organization such as the American nurses' association, to practice within the scope of these services, who are licensed by the New Mexico board of nursing, or the groups they form. Clinical nurse specialists can furnish services to the populations (adult and/or children) as their certification permits;

(7) mental health clinics when services are provided by licensed board eligible or board certified psychiatrists, licensed clinical psychologists (Ph.D., Psy.D. or Ed.D.), clinical nurse specialists, LISWs, LPCCs, and LMFTs;

(8) community mental health centers certified by the department of health, when services are provided by licensed board eligible or board certified psychiatrists or licensed clinical psychologists (Ph.D., Psy.D. or Ed.D.), clinical nurse specialists, LISWs, LPCCs, and LMFTs. Community mental health centers provide, at minimum, outpatient mental health services without regards to age and which are available on a twenty four (24) hour a day basis.

B. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

C. Licensed master's level social workers, licensed psychology associates and master's level licensed

~~counselors (other than LISWs, LPCCs and LMFTs): The following agencies may be reimbursed for services furnished to recipients under twenty one (21) years of age by employees or contractors who are New Mexico licensed master's level social workers, licensed psychology associates and licensed counselors who are graduates of an accredited program, if the services are furnished under the direction and supervision of a licensed psychiatrist, licensed clinical psychologist, LISW, LPCC, LMFT or clinical nurse specialist as permitted by the license or certification they hold:~~

- ~~(1) community mental health centers;~~
- ~~(2) federally qualified health centers (FQHCs);~~
- ~~(3) Indian health services (IHS);~~
- ~~and~~
- ~~(4) EPSDT school based service providers.~~

D. Supervision of licensed master's level social workers, licensed psychology associates and licensed master's level counselors (other than LISWs, LPCCs and LMFTs): Services provided by licensed master's level social workers, licensed psychology associates and licensed counselors listed above must be supervised and periodically evaluated. Supervision must adhere to requirements of the practitioner's applicable licensing board. Periodic evaluation must be conducted at least once every twelve (12) service hours, or more frequently if indicated by the recipient's condition or applicable state/ federal regulation, and must be documented in the recipient record, with signature of the supervisor. Based on periodic evaluation, in consultation with the practitioner providing the service, and review of medical records, evaluations must determine and document the extent to which treatment goals are being met and whether changes in direction or emphasis of the treatment are needed. Recipients receiving services from licensed master's level social workers, licensed psychology associates and licensed counselors must be diagnosed by the supervisor. The diagnosis must be documented in the recipient records with signature of the supervisor.]

(6) individuals licensed as clinical nurse specialists or certified nurse practitioners by the board of nursing who are certified in psychiatric nursing by a national nursing organization, or the groups they form, who can furnish services to adults or children as their certification permits.

B. Upon approval of New Mexico medical assistance program provider participation agreements by MAD, the following agencies are eligible to be reimbursed for providing mental health professional services:

- (1) community mental health cen-

ters licensed by the department of health and/or the children, youth and families department;

- (2) federally qualified health centers (FQHCs);
- (3) Indian health service (IHS) hospitals and clinics;
- (4) PL 93-638 tribally operated hospitals and clinics;
- (5) children, youth and families department; and
- (6) schools providing services identified in individualized education plans or individualized family services plans.

C. Upon approval of New Mexico medical assistance program provider participation agreements by MAD, agencies listed above in Subsection B of 8.310.8.10 NMAC may be reimbursed for supervised outpatient therapy services, as defined below in Subsection B of 8.310.8.10 NMAC may be reimbursed for supervised outpatient therapy services, as defined below in Subsection B of 8.310.8.13 NMAC, provided by:

- (1) licensed masters level social workers (LMSW);
- (2) licensed professional mental health counselors (LPC);
- (3) licensed mental health counselors (LMHC);
- (4) licensed psychologist associates;
- (5) licensed professional art therapists (LPAT);
- (6) registered mental health counselors (RMHC); and;
- (7) registered independent mental health counselors (RIMHC).

D. Services must be provided within the scope of the practice and licensure for each provider and must be in compliance with the statutes, rules and regulations of the applicable Practice Act.

E. Once enrolled, providers receive a packet of information including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

[2/1/95; 3/1/99; 8.310.8.10 NMAC - Rn, 8 NMAC 4.MAD.717.1 & A, 11/1/04; A, 11/1/05]

8.310.8.11 PROVIDER RESPONSIBILITIES: Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies*. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. See 8.302.1 NMAC for

recipients whose medicaid coverage is restricted and 8.302.12 NMAC for dual eligible medicaid recipients. Providers must maintain records which are sufficient to fully disclose the extent and nature of the services provided to recipients. See 8.302.1 NMAC, *General Provider Policies*.

[2/1/95; 3/1/99; 8.310.8.11 NMAC - Rn, 8 NMAC 4.MAD.717.2, 11/1/04; A, 11/1/05]

8.310.8.12 C O V E R A G E CRITERIA:

A. Medicaid covers medically necessary mental health professional services including evaluations, therapy, tests and reports required by the condition of the recipient. All services must be furnished within the limits of medicaid benefits, within the scope and practice of the eligible provider's respective profession as defined by state law, and in accordance with applicable federal, state, and local laws and regulations.

B. ~~Reasonable expectation of improvement:~~ Services must be reasonably expected to improve the recipient's condition. **Medical necessity:** All services must be provided in compliance with the current medicaid definition of medical necessity.

[2/1/95; 3/1/99; 8.310.8.12 NMAC - Rn, 8 NMAC 4.MAD.717.3, 11/1/04; A, 11/1/05]

8.310.8.13 C O V E R E D SERVICES:

A. **Inpatient treatment and evaluations:** ~~Medicaid covers inpatient psychiatric admission.~~ Except as noted below in 8.310.8.14 NMAC, medicaid covers mental health professional services during an inpatient psychiatric admission including admission evaluations, testing, therapy and treatment for the acute phase of an illness when these services are furnished by licensed board-eligible or board-certified psychiatrists ~~or~~, licensed clinical psychologists (Ph.D., Psy.D., or Ed.D.), or individuals licensed as clinical nurse specialists or certified nurse practitioners by the board of nursing who are certified in psychiatric mental health nursing by a national nursing organization; and are consistent with the comprehensive treatment plan in effect at the inpatient facility. Acute care psychiatric hospitals and specialty units of general acute care hospitals are considered inpatient facilities for purposes of medicaid coverage.

B. **Outpatient therapy services:** Medicaid covers outpatient evaluations, testing and therapy. Services may require prior authorization from ~~the New Mexico utilization review agent~~ MAD or its designee and will be reviewed based on criteria approved by HSD. Any currently allowable treatment modality (individual, group, family) in any combination is cov-

ered. Frequency of services is to be determined by ~~clinical~~ medical necessity. Services furnished by eligible providers must be specified in the client's treatment plan. The plan must be ~~developed~~ completed by the third (3rd) therapy session. In the treatment of minor-age clients, the treatment plan must document involvement of clients, families, and if applicable, others involved in the child's care. Adult clients ~~with~~, or guardians whenever appropriate, should participate in the development of their treatment plans. The treatment plan and all supporting documentation must be available for review in the client record. Services must be consistent with the treatment plan in effect at the time the services are provided.

C. **Therapy in partial hospital settings, ~~JCAHO-accredited~~ JCAHO- or COA-accredited RTCs, non-accredited residential treatment and group home services and treatment foster care:** Routine mental health care is covered ~~in the reimbursement rates~~ for recipients under the age of twenty-one (21) in partial hospitalization programs, ~~JCAHO-accredited~~ JCAHO- or COA-accredited RTCs, non-accredited residential treatment and group home services, and treatment foster care. Additional services not covered by the fixed rates may be provided only after obtaining prior authorization from the utilization review agent. The additional services must be consistent with the treatment plan ~~in effect at the time services are provided~~. Services not covered by fixed rates that would be eligible for prior authorization ~~are~~ may include:

(1) ~~Medication management:~~ Medication management of psychotropic medications for recipients in residential treatment services and treatment foster care placement. ~~In accredited residential treatment centers, prior authorization could be obtained for conditions which pose unusual or frequent complications in monitoring or potential side effects, or continual or repetitive medication review due to persistent serious symptom presentation.~~

(2) Psychological testing; which is not duplicative and is clinically necessary to meet the "extraordinary and specific," ~~(see definition below)~~ complex diagnostic needs of the client, ~~(see Paragraph (3) of Subsection C of 8.310.8.13 NMAC below)~~. Such psychological testing will not replace the routine psychological testing provided within the scope of the program.

(3) Individual, group and family therapy; which is additional to the core program therapies and is performed by clinicians whose specialized training is necessary to treat documented "extraordinary and specific" ~~(see definition below)~~ client needs. Additional group therapy will be

reimbursed only for recipients placed in treatment foster care. Conditions and circumstances which meet the definition of "extraordinary and specific need":

(a) complex diagnoses or symptom presentations such as, but not limited to, continuing psychotic features, persistent aggression which does not remit with standard behavioral interventions, or secondary encopresis;

(b) diagnostic questions which are persistent, recurring, or complicated;

(c) clinical situations or conditions which threaten further decompensation without intensive treatment.

D. **Injections:** Medicaid covers injections subject to the injection and pharmacy policies. See 8.310.2 NMAC, *Medical Service Providers* and 8.324.4 NMAC, *Pharmacy Services*.

E. **Medication review visits:** Medicaid covers brief office visits performed by an M.D., D.O. ~~or a qualified CNS~~, qualified psychologist, qualified nurse as defined above in Paragraph (7) of Subsection A of 8.310.8.10 NMAC for the sole purpose of monitoring or changing prescriptions in the treatment of covered disorders.

F. **Treatment for substance abuse:** Medicaid covers up to twelve (12) hours of psychiatric therapy services for the treatment of alcohol abuse for recipients over ~~twenty-one (21)~~ twenty (20) years of age.

G. **Services provided to recipients under twenty-one years of age:** Additional services are covered for recipients under twenty-one (21) years of age. See 8.320.2 NMAC, *EPSDT Services* [MAD-740].

H. **Disorders covered for recipients under twenty-one years of age:** Medicaid covers services for the following disorders for recipients under twenty-one (21) years of age only:

(1) personality disorders;

(2) substance abuse or dependence; ~~and~~

~~(3) conditions not attributable to a mental disorder including sexual abuse, physical abuse, and emotional abuse.~~

[2/1/95; 3/1/99; 8.310.8.13 NMAC - Rn, 8 NMAC 4.MAD.717.4 & A, 11/1/04; A, 11/1/05]

8.310.8.14 NON COVERED SERVICES: Mental health professional services are subject to the limitations and coverage restrictions which exist for other medicaid services. See 8.301.3 NMAC, *General Noncovered Services* [MAD-602]. Medicaid does not cover the following mental health specific services:

A. hypnotherapy;

B. biofeedback;

~~C. conditions where a rea-~~

sonable expectation of improvement does not exist;

~~D. treatment for social maladjustments without manifesting psychiatric disorders, including occupational maladjustment, marital maladjustment, sexual dysfunctions, and personality disorders in adults;~~

~~E. treatment provided in alcohol or drug rehabilitation units;~~

~~F. milieu therapy;~~

~~G. educational or vocational services related to traditional academic subjects or vocational training;~~

~~H. experimental or investigational procedures, technologies or non-drug therapies and related services;~~

~~I. activity therapy, group activities and other services which are primarily recreational or diversional in nature; and~~

~~J. electroconvulsive therapy.]~~

C. conditions which do not meet the standard of medical necessity as defined in medicaid regulations;

D. conditions defined only by V-codes in the current version of the international classification of diseases (however diagnoses which arise from conditions defined by V-codes and which meet the medicaid definition of medical necessity are covered);

E. treatment for personality disorders;

F. treatment provided for adults 21 and older in alcohol or drug rehabilitation units;

G. milieu therapy;

H. educational or vocational services related to traditional academic subjects or vocational training;

I. experimental or investigational procedures, technologies or non-drug therapies and related services;

J. activity therapy, group activities and other services which are primarily recreational or diversional in nature;

K. electroconvulsive therapy;

L. services provided by non-licensed counselors, therapists and/or social workers, except where exempted by law; and

M. treatment of mental retardation alone.

[2/1/95; 3/1/99; 8.310.8.14 NMAC - Rn, 8 NMAC 4.MAD.717.5, 11/1/04; A, 11/1/05]

8.310.8.15 P R I O R AUTHORIZATION AND UTILIZATION REVIEW

All medicaid services ~~are~~ may be subject to utilization review for medical necessity and program compliance. Reviews ~~can~~ may be performed before services are furnished, after services are furnished and before payment

is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

A. Prior authorization:

[All services or procedures require prior authorization from MAD or its designee, with the exception of crisis intervention or in the case of an emergency. These services will be reviewed retrospectively. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.] Certain procedures or services may require prior authorization from MAD or its designee. Any service may be reviewed prospectively, concurrently or retrospectively. See Subsection A of 8.311.2.16 NMAC, *Covered Emergency Services* [MAD-721.71].

B. Eligibility determination:

Prior authorization of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

C. Reconsideration:

Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[2/1/95; 3/1/99; 8.310.8.15 NMAC - Rn, 8 NMAC 4.MAD.717.6, 11/1/04; A, 11/1/05]

8.310.8.16 REIMBURSEMENT:

A. Mental health professional service providers must submit claims for reimbursement on the HCFA-1500 claim form or its successor. See 8.302.2 NMAC, *Billing for Medicaid Services*. Once enrolled, providers receive instructions on documentation, billing, and claims processing. Reimbursement to providers for covered services is made at the lesser of the following:

(1) the provider's billed charge; or
(2) the MAD fee schedule for the specific service or procedure.

B. The provider's billed charge must be their usual and customary charge for services.

C. "Usual and customary charge" refers to the amount which the individual provider charges the general public in the majority of cases for a specific procedure or service.

~~D. Mental health professional services must be provided directly to the recipient by the psychiatrist, psychologist (Ph.D., Psy.D., or Ed.D.), licensed pro-~~

~~fessional clinical mental health counselor (LPCC), licensed marriage and family therapist (LMFT), licensed independent social worker (LISW) or clinical nurse specialist. Psychiatrists, psychologists, LPCCs, LMFTs, LISWs and clinical nurse specialists cannot bill for services performed by master's level providers, nurses, bachelor's level and other health professionals even though the services may have been furnished under their direction.~~

~~E. Licensed master's level providers cannot bill medicaid directly. Services furnished by licensed master's level provider are billed by the eligible agency provider where they are employed or furnish services under contract.~~

~~F. Professional components are allowed for mental health services performed within a hospital setting by psychiatrists and licensed psychologists (Ph.D., Psy.D., or Ed.D.).~~

~~G. For institutional providers, costs associated with professional mental health services must be excluded from the facility cost report prior to cost settlement or rebasing.]~~

D. For mental health professional service providers who are members of a practice plan affiliated with a state operated teaching hospital, reimbursement will equal the lesser of the provider's billed charge or the average rate paid for the service by commercial insurers as established by MAD. Providers eligible to be paid under this part will be paid on an interim claims-specific basis through the MAD claims processing system. The final payment for services provided will be made through a supplemental payment made in a specified time period that reflects any difference between the interim payment amounts and the average rate paid by commercial insurers for the services.

E. Mental health practitioners requiring supervision (see Subsection C of 8.310.8.10 NMAC) cannot bill medicaid directly. Services furnished by these licensed master's level providers are billed by the eligible agencies identified in Subsection B of 8.310.8.10 NMAC, above, whether they are employed or whether they furnish services under contract.

F. Mental health professional services must be provided directly to the recipient by the licensed mental health professionals listed in Subsection A of 8.310.8.10 NMAC, above. Services performed by supervised master's level providers, nurses, bachelor's level and other health professionals cannot be billed by the licensed supervisors even though the services may have been furnished under their direction.

G. Separate professional component billing is allowed for mental

health services performed within a hospital setting by psychiatrists and licensed psychologists (Ph.D., Psy.D., or Ed. D.).

H. For facility-based providers, costs billed separately as a professional component must be excluded from the facility cost report prior to cost settlement or rebasing.

[2/1/95; 3/1/99; 8.310.8.16 NMAC - Rn, 8 NMAC 4.MAD.717.7, 11/1/04; A, 11/1/05]

8.310.8.17 REIMBURSEMENT

FOR HOSPITAL-BASED SERVICES: Reimbursement for office visits, diagnostic procedures, or surgical services furnished in hospital settings that are ordinarily furnished in a provider's office is paid at sixty percent (60%) of the fee schedule-allowed amount for each professional service. Medicaid follows medicare principles in determining which procedures are subject to this payment reduction.

[8.310.8.17 NMAC - N, 11/1/05]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.324.5 NMAC, Sections 5, 12 and 13, which will be effective on November 1, 2005. The Medical Assistance Division amended sections 12 and 13 to show the coverage of oral nutritional supplements to more clearly and more appropriately describe the conditions under which these items are covered.

8.324.5.5 EFFECTIVE DATE:

February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.324.5.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 7/1/04; A, 11/1/05]

8.324.5.12 COVERED DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLIES:

A. Medicaid covers durable medical equipment (DME) that meet the definition of DME, the medical necessity criteria and the prior authorization requirements. Medicaid covers repairs, maintenance, delivery of durable medical equipment and disposable and non-reusable items essential for use of the equipment, subject to the limitations specified in this section. All items purchased or rented must be ordered by providers who are currently enrolled in Medicaid.

(1) "Durable medical equipment" is defined as equipment that can withstand repeated use, is primarily and customarily used to serve a medical purpose, is not useful to individuals in the absence of an illness or injury and is appropriate for use at home.

(2) Equipment used in a recipi-

ent's residence must be used exclusively by the recipient for whom it was approved.

(3) To meet the medical necessity criterion, durable medical equipment must be necessary for the treatment of an illness or injury or to improve the functioning of a body part.

(4) Replacement of equipment is limited to one item every three years for adults, unless there are changes in medical necessity or are otherwise indicated in policy.

B. Medicaid covers medical supplies that are necessary for an ongoing course of treatment within the limits specified in this section. As distinguished from DME, medical supplies are disposable and non-reusable items. Medicaid also covers oxygen, nutritional products and shipping charges as specified in this section. Medicaid coverage for DME and medical supplies may be limited for recipients in institutional settings when the institutions are expected to provide the necessary items. Institutional settings are hospitals, nursing facilities, intermediate care facilities for the mentally retarded and rehabilitation facilities.

C. Covered services for non-institutionalized recipients:

Medicaid covers certain medical supplies, nutritional products and durable medical equipment provided to eligible non-institutionalized recipients without prior authorization. Medicaid covers the following for non-institutionalized recipients:

(1) needles, syringes and intravenous (IV) equipment including pumps for administration of drugs, hyperalimentation or enteral feedings;

(2) diabetic supplies, chemical reagents, including blood, urine and stool testing reagents;

(3) gauze, bandages, dressings, pads, and tape;

(4) catheters, colostomy, ileostomy and urostomy supplies and urinary drainage supplies;

(5) ~~parenteral nutritional products prescribed for recipients who have a documented medical need for increased nutrition; and~~ parenteral nutritional support products prescribed by a physician on the basis of a specific medical indication for a recipient who has a defined and specific pathophysiologic process for which nutritional support is considered specifically therapeutic and for which regular food, blenderized food, or commercially available retail consumer nutritional supplements would not meet medical needs;

(6) apnea monitors: prior authorization is required if the monitor is needed for six (6) months or longer; and

(7) disposable sterile gloves are limited to 200 per month; disposable non-sterile gloves are limited to 200 per month.

D. **Covered services for institutionalized and non-institutionalized recipients:** Medicaid covers the following items without prior authorization for both institutionalized and non-institutionalized recipients:

(1) trusses and anatomical supports that do not need to be made to measure;

(2) family planning devices;

(3) repairs to DME; Medicaid covers repair and replacement parts if recipients own the equipment for which the repair is necessary and the equipment being repaired is a covered Medicaid benefit; some replacement items used in repairs may require prior authorization; repairs to augmentative and alternative communication devices require prior authorization; see Subsection C of 8.324.5.14 NMAC;

(4) monthly rental includes monthly service and repairs;

(5) replacement batteries and battery packs for augmentative and alternative communication devices owned by the recipient.

E. Covered oxygen and oxygen administration equipment:

(1) Medicaid covers the following oxygen and oxygen administration systems, within the specified limitations:

(a) oxygen contents, including oxygen gas and liquid oxygen;

(b) oxygen administration equipment purchase, with prior authorization: oxygen administration equipment may be supplied on a rental basis for one (1) month without prior authorization; rental beyond the initial month requires prior authorization.

(c) oxygen concentrators, liquid oxygen systems and compressed gaseous oxygen tank systems; Medicaid approves the most economical oxygen delivery system possible for a specific recipient when considering types of oxygen concentrators;

(d) cylinder carts, humidifiers, regulators and flow meters;

(e) purchase of cannulae or masks; and

(f) oxygen tents and croup or pediatric tents.

(2) Medicaid does not cover oxygen tank rental (demurrage) charges as separate charges when renting gaseous tank oxygen systems. If Medicaid pays rental charges for systems, tank rental is included in the rental payments.

(3) Nursing homes are administratively responsible for overseeing oxygen supplied to their residents. Nursing homes are encouraged to enter into agreements with oxygen suppliers to provide a well-managed process for provision of oxygen.

F. **Augmentative and alternative communication devices:** Medicaid covers medically necessary elec-

tronic or manual augmentative communication devices for medicaid recipients. Medical necessity is determined by the medical assistance division or its designee(s). Communication devices whose purpose is also educational and/or vocational are covered only when it has been determined the device meets medical criteria.

(1) A recipient must have the cognitive ability to use the augmentative communication device and meet one of the following criteria:

(a) the recipient cannot functionally communicate verbally or through gestures due to various medical conditions in which speech is not expected to be restored; or

(b) the recipient cannot verbally or through gestures participate in his/her own health care decisions (i.e., making decisions regarding medical care or indicating medical needs or communicate informed consent on medical decisions).

(2) All of the following criteria must be met before an augmentative communication device can be considered for authorization. The communication device must be:

(a) a reasonable and necessary part of the recipient's treatment plan;

(b) consistent with the symptoms, diagnosis or medical condition of the illness or injury under treatment;

(c) not furnished for the convenience of the recipient, the family, the attending practitioner or other practitioner or supplier;

(d) necessary and consistent with generally accepted professional medical standards of care (i.e., not experimental or investigational);

(e) established as safe and effective for the recipient's treatment protocol; and

(f) furnished at the most appropriate level suitable for use in the recipient's home environment.

G. Rental of durable medical equipment: Medicaid covers the rental of durable medical equipment. All rental payments must be applied toward purchase of the equipment. When the rental charges equal the amount allowed by medicaid for purchase, the equipment becomes the property of the recipient for whom it was approved.

(1) Medicaid does not cover routine maintenance and repairs for rental equipment.

(2) Low cost items, defined as those items for which the medicaid allowed payment is less than one hundred and fifty (\$150) dollars, may only be purchased. Purchased DME becomes the property of the medicaid recipient for whom it was approved.

(3) Oxygen concentrators, ventilators, stationary and portable liquid oxygen systems are not subject to the mandatory provisions of applying the rental payments toward purchase. See Subsection E of 8.324.5.12 NMAC, *covered oxygen and oxygen administration equipment*.

H. Delivery of equipment and shipping charges: Medicaid covers the delivery of DME only when the equipment is initially purchased or rented and the round trip delivery is over seventy-five (75) miles. Providers may bill delivery charges as separate additional charges only when the providers customarily charge a separate amount for delivery to non-medicaid patients. Medicaid does not pay delivery charges for equipment purchased by medicare, for which medicaid is responsible only for the coinsurance and deductible. Medicaid covers shipping charges for DME and medical supplies when it is cost effective or practical to ship items rather than have recipients travel to pick up items. Shipping charges are defined as the actual cost of shipping items from providers to recipients by a means other than that of provider delivery. Medicaid does not pay shipping charges for items purchased by medicare for which medicaid is only responsible for the coinsurance and deductible.

I. Rental and purchase of used equipment: Medicaid covers the rental and purchase of used equipment. The equipment must be identified and billed as used equipment. The equipment must have a statement of condition or warranty, and a stated policy covering liability.

J. Wheelchairs and seating systems for institutionalized recipients:

(1) Medicaid covers customized wheelchairs and seating systems made for specific recipients, including recipients who are institutionalized. Written prior authorization is required. MAD or its designee cannot give verbal authorizations for customized wheelchairs/seating systems. A customized wheelchair and seating system is defined as one that has been uniquely constructed or substantially modified for a specific recipient and is so different from another item used for the same purpose that the two items cannot be grouped together for pricing purposes. There must be a customization of the frame for the wheelchair base or seating system to be considered customized.

(2) Repairs to a wheelchair owned by a recipient residing in an institution may be covered.

(3) Customized or motorized wheelchairs required by an institutional recipient to pursue educational or employment activity outside the institution may be covered, and will be reviewed on a case-by-

case basis.

[2/1/95; 3/1/99; 8.324.5.12 NMAC - Rn, 8 NMAC 4.MAD.754.3 & A, 7/1/04; A, 12/1/04; A, 11/1/05]

8.324.5.13 PRIOR AUTHORIZATION AND UTILIZATION

REVIEW: All medicaid services are subject to utilization review for medical necessity and program compliance. Reviews may be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior authorization and claims processing.

A. Services for non-institutionalized recipients that require prior authorization: Medicaid covers certain medical supplies, nutritional products and durable medical equipment provided to eligible recipients with prior authorization. Written requests for items not included in the categories listed above or for a quantity greater than that covered by medicaid may be submitted by the recipient's physician, with a prior authorization request, to MAD for consideration of medical necessity. Please refer to criteria in 8.301.3 NMAC, *General Noncovered Services* [MAD-602.6] for durable medical equipment or medical supplies that are not covered. Medicaid covers the following benefits with prior authorization for non-institutionalized recipients:

(1) enteral nutritional supplements and products provided to recipients who must be tube fed oral nutritional supplements when administered enterally are included;

(2) ~~nutritional supplements taken orally are not covered except for special medical foods prescribed for the treatment of inborn errors of metabolism.~~ oral nutritional support products prescribed by a physician:

(a) on the basis of a specific medical indication for a recipient who has a defined need for which nutritional support is considered therapeutic, and for which regular food, blenderized food, or commercially available retail consumer nutritional supplements would not meet the medical needs;

(b) when medically necessary due to inborn errors of metabolism; or

(c) medically necessary to correct or ameliorate physical illnesses or conditions in children under the age of twenty-one;

(3) either disposable diapers or underpads prescribed for recipients age three and older who suffer from neurological or neuromuscular disorders or who have

other diseases associated with incontinence; ~~diapers will be~~ limited to ~~up to~~ 200 diapers per month or 150 underpads per month;

(4) supports and positioning devices that are part of a DME system, such as seating inserts or lateral supports for specialized wheelchairs;

(5) protective devices, such as helmets and pads;

(6) bathtub rails and other rails for use in the bathroom;

(7) electronic monitoring devices, such as electronic sphygmomanometers, oxygen saturation, fetal or blood glucose monitors and pacemaker monitors;

(8) passive motion exercise equipment;

(9) decubitus care equipment;

(10) equipment to apply heat or cold;

(11) hospital beds and full length side rails;

(12) compressor air power sources for equipment that is not self-contained or cylinder driven;

(13) home suction pumps and lymph edema pumps;

(14) hydraulic patient lifts;

(15) ultraviolet cabinets;

(16) traction equipment;

(17) prone standers and walkers;

(18) trapeze bars or other patient helpers that are attached to bed or free-standing;

(19) home hemodialysis and/or peritoneal dialysis systems, replacement supplies and/or accessories;

(20) wheelchairs and functional attachments to wheelchairs: wheelchairs are authorized every five (5) years; for recipients under twenty-one (21) years of age, wheelchairs can be authorized every (3) years; earlier authorization is possible when dictated by medical necessity;

(21) wheelchair trays;

(22) whirlpool baths designed for home use;

(23) intermittent or continuous positive pressure breathing equipment; and

(24) manual or electronic augmentative and alternative communication devices;

(25) augmentative and alternative communication devices are authorized every five (5) years for adults and every three (3) years for recipients under twenty-one (21) years of age, unless earlier authorization is dictated by medical necessity.

B. Services for institutionalized and non-institutionalized recipients that require prior authorization: Medicaid covers the following items with prior authorization for both institutionalized and non-institutionalized recipients:

(1) trusses and anatomical supports that require fitting or adjusting by

trained individuals, including JOBST hose;

(2) custom-fitted compression stockings;

(3) artificial larynx prosthesis;

(4) repairs to, and replacement parts for, augmentative and alternative communication devices owned by the recipient.

C. Additional review: Services for which prior authorization was obtained remain subject to review at any point in the payment process.

D. Eligibility determination: Prior authorization does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

E. Reconsideration: Providers who disagree with prior authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

F. Reasons for prior authorization denial: Requests for prior authorization are denied for any of the following reasons:

(1) prescribing providers have not examined recipients within two (2) months or have insufficient knowledge of the recipient's condition to enable them to prescribe or recertify the need for DME;

(2) prescriptions do not document recent physician involvement in the estimate of duration of need or the recipient's condition; or

(3) requests are not signed by attending physicians: signature stamps or signatures by employees are not acceptable. [2/1/95; 3/1/99; 6/15/99; 8.324.5.13 NMAC - Rn, 8 NMAC 4.MAD.754.4 & A, 7/1/04; A, 11/1/05]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.322.3 NMAC, Sections 5, 9, 10, and 12 through 17, which will be effective on November 1, 2005. The Medical Assistance Division amended Sections 9 and 12 through 17 to be more specific and to conform to the standardized service definition developed for the Behavioral Health Collaborative, the term prior approval has been changed to prior authorization to be consistent with other updated policies, and minor grammatical changes have been made. Also, service exclusions identified in the standardized service definition developed for the behavioral health collaborative have been incor-

porated. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.745.2 to comply with NMAC requirements.

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

[2/1/95; 8.322.3.5 NMAC - Rn, 8 NMAC 4.MAD.000.5 & A, 11/1/05]

8.322.3.9 BEHAVIOR MANAGEMENT SKILLS DEVELOPMENT SERVICES:

The New Mexico medicaid program (medicaid) pays for medically necessary health services furnished to eligible recipients. To help recipients under twenty-one (21) years of age who are in need of behavior management intervention receive services, the New Mexico medical assistance division (MAD) pays for eligible providers to furnish these services as part of the early and periodic screening, diagnosis and treatment (EPSDT) program [42 CFR Section 441.57]. ~~[These services can be accessed only through the tot to teen healthcheck screen or other diagnostic evaluations furnished through a healthcheck referral.]~~ The need for behavior management services must be identified by an independent, qualified health care practitioner through an EPSDT examination or other diagnostic evaluation furnished through an EPSDT referral. Behavior management services assist in preventing inpatient hospitalizations or residential placement of recipients through use of teaching, training and coaching activities designed to assist individuals in acquiring, enhancing and maintaining the life, social and behavioral skills needed to function successfully within the home and community settings. Behavior management services are provided as part of a comprehensive approach to treatment and in conjunction with other services as indicated in a treatment plan. This part describes eligible providers, covered services, service limitations, and general reimbursement methodology.

[2/1/95; 8.322.3.9 NMAC - Rn, 8 NMAC 4.MAD.745.2 & A, 11/1/05]

8.322.3.10 ELIGIBLE PROVIDERS:

A. Upon approval of New Mexico medical assistance program provider agreements by MAD, agencies that meet the following requirements are eligible to be reimbursed for providing behavior management services:

(1) certification as providers of behavior management skills development services by the children, youth and families department (CYFD); and

(2) employ or contract with behavior management specialists who work under the supervision of a licensed practi-

tioner ~~[in the area of behavior management services, as described in the certification criteria]~~ employed by a certified behavior management services agency.

B. Recipients have the right to receive services from the eligible provider of their choice.

C. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, certification standards and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

[2/1/95; 8.322.3.10 NMAC - Rn, 8 NMAC 4.MAD.745.21 & A, 11/1/05]

8.322.3.12 ELIGIBLE RECIPIENTS:

A. Behavior management services can be furnished only to medicaid recipients under twenty-one (21) years of age who: ~~[need behavior management intervention to avoid inpatient hospitalization, residential treatment, separation from their families or who require continued intensive treatment following hospitalization or out-of-home placement as a transition to avoid return to a more restrictive environment.]~~

(1) are at-risk for out-of-home placement due to unmanageable behavior at home or within the community; or

(2) need behavior management intervention to avoid inpatient hospitalizations or residential treatment; or

(3) require behavior management support following institutional or other out-of-home placement as a transition to maintain the recipient in the home and community.

B. To receive services, recipients must meet the level of care for this service established by MAD or its designee.

[2/1/95; 8.322.3.12 NMAC - Rn, 8 NMAC 4.MAD.745.23 & A, 11/1/05]

8.322.3.13 COVERED SERVICES:

Medicaid covers services specified in individualized treatment plans which are designed to improve the recipient's performance in targeted behaviors, reduce emotional and behavioral excess, increase social skills and enhance behavioral skills through a regimen of positive intervention and reinforcement.

A. The following tasks must be identified in a behavior management plan, performed by behavior management specialists and included in the payment rate:

(1) implementation of the behavior management plan;

(2) ~~[instruction and]~~ assistance in achieving and/or maintaining appropriate behavior management skills through ~~[skilled intervention]~~ teaching, training and coaching activities;

(3) working with foster, adoptive or natural families to help recipients achieve and/or maintain appropriate behavior management skills; and

(4) maintaining case notes and documentation of ~~[activities]~~ tasks as required by the ~~[agency]~~ provider and the standards under which it operates.

B. An agency certified for behavioral management skills development services must: ~~[perform the following:~~

~~(1) assessment of the recipient's progress in behavioral management services; and~~

~~(2) twenty-four (24) hour availability of appropriate staff to respond to crisis situations;]~~

(1) develop a behavior management plan, based on a relevant clinical assessment, as part of a comprehensive treatment plan covering an integrated program of therapeutic services as applicable;

(2) identify all targeted behaviors that are to be addressed by the behavior management specialist;

(3) assess the recipient's progress in behavioral management skills;

(4) ensure the service is part of a comprehensive treatment approach and is coordinated with other treatment modalities as appropriate; and

(5) offer twenty-four (24) hour availability of appropriate staff to respond to crisis situations.

[2/1/95; 8.322.3.13 NMAC - Rn, 8 NMAC 4.MAD.745.24 & A, 11/1/05]

8.322.3.14 NONCOVERED SERVICES:

Behavior management services are subject to the limitations and coverage restrictions which exist for other medicaid services. See 8.301.3 NMAC, *General Noncovered Services* [MAD-602]. Medicaid does not cover the following specific services in conjunction with behavior management services:

A. formal educational or vocational services related to traditional academic subjects or vocational training; ~~[and]~~

B. activities which are not designed to accomplish the objectives delineated in covered services and which are not included in the behavioral management treatment plan; and

C. residential treatment care.

[2/1/95; 8.322.3.14 NMAC - Rn, 8 NMAC 4.MAD.745.25 & A, 11/1/05]

8.322.3.15 BEHAVIOR MAN-

AGEMENT PLAN: The behavior management plan must identify all targeted behaviors that are to be addressed by the behavior management specialist. The behavior management plan should include, when appropriate, a goal of working with the foster, adoptive or natural family of the individual in order to assist with the achievement and/or maintenance of behavior management skills. The behavior management plan must identify the use of a behavior management specialist, who is responsible for implementation of the behavior management plan through teaching, training and coaching skills.

[8.322.3.15 NMAC - N, 11/1/05]

8.322.3.16 TREATMENT PLAN:

If the recipient is receiving other behavioral health services in addition to behavior management services, ~~[the]~~ a treatment plan must be developed by a team of professionals in consultation with recipients, parents, legal guardians and physicians ~~[, if applicable,]~~ prior to service delivery or within fourteen (14) days of initiation of services.

A. The behavioral management plan must be included, when appropriate, in a comprehensive treatment plan which covers an integrated program of therapeutic services.

~~[A-]~~ B. The team must review the treatment plan at least every thirty (30) days.

~~[B-]~~ C. The following must be contained in the treatment plan or documents used in the development of the treatment plan. The treatment plan and all supporting documentation must be available for review in the recipient's file:

(1) statement of the nature of the specific problem and the specific needs of the recipient;

(2) description of the functional level of the recipient, including the following:

(a) mental status assessment;
(b) intellectual function assessment;

(c) psychological assessment;
(d) educational assessment;
(e) vocational assessment;
(f) social assessment;
(g) medication assessment; and
(h) physical assessment.

(3) statement of the least restrictive conditions necessary to achieve the purposes of treatment;

(4) description of intermediate and long-range goals, with the projected timetable for their attainment and the duration and scope of services;

(5) statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including provi-

sions for the review and modification of the plan;

(6) specification of responsibilities, description of staff involvement, orders for medication(s), treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the recipient; and

(7) criteria for release to less restrictive settings for treatment, discharge plans, criteria for discharge and projected date of discharge.

[2/1/95; 8.322.3.16 NMAC - Rn, 8 NMAC 4.MAD.745.26 & A, 11/1/05]

8.322.3.17 PRIOR ~~[APPROVAL]~~ AUTHORIZATION AND UTILIZATION REVIEW:

All medicaid services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior ~~[Approval]~~ Authorization and Utilization Review*. Once enrolled, providers receive instructions and documentation forms necessary for prior ~~[approval]~~ authorization and claims processing.

A. Before any behavior management skills development services are furnished to medicaid recipients, prior ~~[approval must be obtained]~~ authorization may be required from MAD or its designee. ~~[Required documentation must be included with requests for approval. Request for services are prior approved for an initial thirty (30) day period. Services continue only after approval of the treatment plan by MAD or its designee. A request for continued stay is approved for up to three (3) months.]~~ Services for which prior ~~[approval]~~ authorization was obtained remain subject to utilization review at any point in the payment process.

B. Prior ~~[approval]~~ authorization of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

C. Providers who disagree with prior ~~[approval]~~ authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]. [2/1/95; 8.322.3.17 NMAC - Rn, 8 NMAC 4.MAD.745.27 & A, 11/1/05]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.322.4 NMAC, Sections 5, 9 through 16, and 18, which will be effective on November 1, 2005. The Medical Assistance Division amended the section to be more specific and to conform to the standardized service definition developed for the Behavioral Health Collaborative, the term prior approval has been changed to prior authorization to be consistent with other updated policies, and minor grammatical changes have been made. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.745 to comply with NMAC requirements.

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

[2/1/95; 8.322.4.5 NMAC - Rn, 8 NMAC 4.MAD.000.5 & A, 11/1/05]

8.322.4.9 DAY TREATMENT:

The New Mexico medicaid program (medicaid) pays for medically necessary health services furnished to eligible recipients. To help medicaid recipients under twenty-one (21) years of age receive services, the New Mexico medical assistance division (MAD) pays for services furnished by day treatment providers as part of the early and periodic screening, diagnosis and treatment (EPSDT) program [42 CFR section 441.57]. The need for day treatment services must be identified by an independent, qualified health care practitioner through an EPSDT examination or other diagnostic evaluation conducted through an EPSDT referral. Day treatment services include counseling (individual, group, family), parent and consumer education, skill and socialization training that focus on the amelioration of functional and behavioral deficits. Intensive coordination/linkage with schools or other child serving agencies is included. The goals of the service must be clearly documented, utilizing a clinical model for service delivery and support. This part describes service description, eligible providers, provider responsibilities, eligible recipients, covered services, non-covered services, treatment plan, prior ~~[approval]~~ authorization and utilization review, and general reimbursement methodology.

[2/1/95; 3/15/97; 8.322.4.9 NMAC - Rn, 8 NMAC 4.MAD.745.3 & A, 11/1/05]

8.322.4.10 ELIGIBLE PROVIDERS: Upon ~~[approval]~~ authorization of New Mexico medical assistance pro-

gram provider participation agreements by MAD, agencies which are licensed by the New Mexico department of health as limited diagnostic and treatment centers and meet the certification standards established by MAD or its designee are eligible to be reimbursed for furnishing day treatment services. Those programs located in public school settings do not need to be licensed. A waiver is provided by the department of health since the school is already a licensed facility. Direct services must be furnished by licensed clinical professionals or under their supervision, as described in the certification criteria. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review criteria and other pertinent material from MAD or its designee. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

[2/1/95; 3/15/97; 8.322.4.10 NMAC - Rn, 8 NMAC 4.MAD.745.31 & A, 11/1/05]

8.322.4.11 PROVIDER RESPONSIBILITIES:

Providers who furnish services to medicaid recipients ~~[will]~~ must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, *General Provider Policies* [MAD-701]. Providers ~~[will]~~ must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance. Providers ~~[will]~~ must maintain records which are sufficient to fully disclose the extent and nature of the services furnished to recipients. See 8.302.1 NMAC, *General Provider Policies* [MAD-701].

[2/1/95; 3/15/97; 8.322.4.11 NMAC - Rn, 8 NMAC 4.MAD.745.32 & A, 11/1/05]

8.322.4.12 ELIGIBLE RECIPIENTS:

Medicaid covers day treatment services for recipients ~~[who are under twenty one (21) years of age who,]~~ under the age of 21 who have emotional, behavioral, and neurobiological or substance abuse problems, may be at high risk of out-of-home placement, may have a serious emotional disturbance (SED); and require structured therapeutic services in order to attain or maintain functioning in major life domains of home, work or school. Recipients must, through an assessment process, have been determined to meet the criteria established by MAD or its designee for admission to ~~[non-residential mental health]~~ day treatment services and to be able to benefit from this level of care. ~~[Day treatment services are designed for individuals under twenty one (21) years of age who, as a result of emotional, behavioral,~~

neurobiological or substance abuse problems, and who have been diagnosed as severely emotionally disturbed (SED), are at moderate to high risk of being placed in an out-of-home placement; exhibit risk for serious clinical deterioration; exhibit emotional and behavioral problems which impair their functioning; and other less intensive interventions have failed or are inappropriate for the recipient's clinical needs.] Day treatment services are also designed to transition those individuals being discharged from residential services, that require intensive therapeutic interventions to facilitate family reunification and/or emancipation in a least restrictive environment. Recipients have the freedom to receive services from the eligible provider of their choice.

[2/1/95; 3/15/97; 8.322.4.12 NMAC - Rn, 8 NMAC 4.MAD.745.32 & A, 11/1/05]

8.322.4.13 COVERED SERVICES:

[Medicaid covers therapeutic day treatment services which are a coordinated and intensive set of therapeutic individual, family, multifamily and group services intended for recipients whose living environments provide adequate supervision and support or who are living independently. The goal of day treatment is to maintain the recipient in the home or community environment and to address the recipient's emotional or behavioral dysfunction in the most normal environment possible. Day treatment meets this goal by improving the recipient's adaptive functioning through individual, group and family therapies as well as specialized group sessions. The treatment objectives identify skills, deficits and focus on skills acquisition for both the recipient and their family system. By identifying strengths of the recipient and their families, the program can build on the functionality of the family system. The following services will be furnished by day treatment service providers to receive reimbursement from medicaid. Payment for performance of these services is included in the day treatment reimbursement rate:

A. assessment and diagnosis of the social, emotional, physical and psychological needs of the recipient and family for the development of the initial treatment plan. Evaluations which have already been performed will not be repeated;

B. development of a comprehensive treatment plan which meets MAD requirements, including interventions with significant members of the recipient's family which are designed to enhance adaptive functioning. The individualized, goal-directed treatment plan will specify the intended outcome and projected length of treatment services based on the individual and family needs and strengths;

C. counseling and therapy services furnished in individual, family, multifamily, group and/or specialized group sessions will focus on the attainment of the following skills: anger management, communication and problem solving skills, impulse control, coping and mood management skills, chemical dependency and relapse prevention skills, identification of maladaptive family processes and more functional alternatives, and individualized therapeutic goal setting. Only those activities of daily living and basic life skills that are assessed as being a clinical problem should be addressed in the treatment plan and deemed appropriate to be included in the individualized program;

D. families who are unable to attend regularly scheduled sessions at the day treatment facility due to transportation difficulties or other reasons may receive individual family sessions scheduled in their home by the provider. Family outreach by the providers is strongly encouraged;

E. supervision of self-administered medication;

F. furnishing appropriate staff to provide crisis intervention; and

G. therapeutic recreation activities which are supportive of clinical objectives and measurable outcomes specifically listed in the treatment plan.].

A. Behavioral health day treatment services are non-residential specialized services/training provided during or after school, weekends, or when school is not in session. Services include counseling (individual, group, family), parent and consumer education, skill and socialization training that focus on the amelioration of functional and behavioral deficits. Intensive coordination/linkage with schools or other child serving agencies is included. The goals of the service must be clearly documented, utilizing a clinical model for service delivery and support.

B. The goal of day treatment is to maintain the recipient in the home or community environment.

C. Day treatment services must be provided in a school setting or other community setting; however, there must be a distinct separation between these services in staffing, program description and physical space from other behavioral health services offered. Programming is designed to complement and coordinate with the educational system.

D. Services must be based upon the child/adolescent's individualized treatment plan goals and should include interventions with a significant member of the family, which are designed to enhance adaptive functioning.

E. The following services must be furnished by day treatment service

providers to receive reimbursement from medicaid. Payment for performance of these services is included in the day treatment reimbursement rate:

(1) assessment and diagnosis of the social, emotional, physical and psychological needs of the child/adolescent and family for treatment planning, while ensuring that evaluations already performed are not unnecessarily repeated;

(2) development of a treatment plan and discharge plan and regular reevaluation of these plans;

(3) regularly scheduled individual, family, multi-family, group or specialized group sessions focusing on the attainment of skills, such as managing anger, communicating and problem-solving, impulse control, coping and mood management, chemical dependency and relapse prevention (if applicable);

(4) family sessions (and family outreach is encouraged);

(5) supervision of self-administered medication, as clinically indicated;

(6) therapeutic recreational activities that are supportive of the clinical objectives and identified in the individualized treatment plan;

(7) availability of appropriate staff to provide crisis intervention during program hours; and

(8) day treatment services provide a minimum of four hours of structured programming per day, two to five days per week, based on acuity and clinical needs of the child/adolescent and family.

E. Only those activities of daily living and basic life skills that are assessed as being a clinical problem should be addressed in the treatment plan and deemed appropriate to be included in the individualized program.

G. Families who are unable to attend regularly scheduled sessions at the day treatment facility due to transportation difficulties or other reasons may receive individual family sessions scheduled in their home by the provider.

[2/1/95; 3/15/97; 8.322.4.13 NMAC - Rn, 8 NMAC 4.MAD.745.33 & A, 11/1/05]

8.322.4.14 NON COVERED SERVICES:

Day treatment services are subject to the limitations and coverage restrictions which exist for other medicaid services. See 8.301.3 NMAC, *General Noncovered Services* [MAD-602]. Medicaid does not cover the following specific day treatment activities:

- A. educational programs;
- B. vocational training which is related to specific employment opportunities, work skills, or work settings;
- C. pre-vocational training;
- [and]
- D. any service not identi-

fied in the treatment plan;

E. recreation activities not related to the treatment issues;

F. leisure time activities such as watching television, movies or playing computer games;

G. transportation reimbursement for the therapist who delivers services in the family's home;

H. services for which prior authorization was not obtained; and

I. day treatment services cannot be offered at the same time as partial hospital program or any residential program.

[2/1/95; 3/15/97; 8.322.4.14 NMAC - Rn, 8 NMAC 4.MAD.745.35 & A, 11/1/05]

8.322.4.15 T R E A T M E N T

PLAN: ~~[An]~~ Development of a treatment plan and discharge plan and regular reevaluation of these plans is required. Services must be based upon the child/adolescent's individualized treatment plan goals and should include interventions with significant member of the family, which are designed to enhance adaptive functioning. The initial treatment plan must be developed and approved by the utilization review designee prior to the delivery of services. The initial treatment plan [will] must include documentation of prior treatment interventions and their efficacy, family involvement in the current treatment process, and the presenting clinical problems and targeted treatment behaviors. A statement addressing the therapeutic appropriateness of this level of care [will] must be included in the initial documentation. The comprehensive treatment plan [will] must be developed within fourteen (14) days of the initiation of services by a team of professionals in consultation with the recipient, their families and others involved in the recipient's care.

A. The team must review and modify the treatment plan at least every thirty (30) days or more often when indicated based on the changing clinical needs.

B. The following [will] must be contained in the assessment process or clinical information obtained and used in the development of the treatment plan: the functional level of the recipient's mental status; intellectual function; physical, psychological, vocational and social evaluations; medication status.

C. The treatment plan [will] must be based on the clinical needs identified in the assessments.

D. Identified clinical needs [will] must be addressed by specific therapeutic interventions. There [will] must be documentation by the designated staff responsible for those interventions. Documentation should focus on measurable outcomes of the treatment goals and objec-

tives.

E. The comprehensive treatment plan and all supporting documentation [will] must be available for review in the record. The following should be included in the record:

(1) the provider [will] must document the rationale day treatment is the least restrictive environment for the recipient's clinical needs;

(2) description of intermediate and long-range goals, with a projected timetable for their attainment and the duration and scope of therapy services;

(3) statement and rationale of the treatment plan for achieving these intermediate and long-range goals, including provision for review and modification of the plan;

(4) for the purpose of comprehensive coordination of services, the program [will] must specify in the comprehensive treatment plan each of the following areas of care which may be delivered by other services providers: medication orders, restorative and rehabilitative services such as [OT, PT, or ST]; occupational therapy, physical therapy or speech therapy, psychiatric/psychology services, social services, diet and special procedures recommended for the health and safety of the recipient; and

(5) aftercare and discharge plans, a projected discharge date will be criteria for discontinuation of services.

[2/1/95; 3/15/97; 8.322.4.15 NMAC - Rn, 8 NMAC 4.MAD.745.36 & A, 11/1/05]

8.322.4.16 P R I O R [A P P R O V A L] A U T H O R I Z A T I O N

AND UTILIZATION REVIEW: All medicaid services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior [Approval] Authorization and Utilization Review* [MAD-705]. Once enrolled, providers receive instructions and documentation forms necessary for prior [approval] authorization and claims processing.

A. Before any day treatment services are furnished to medicaid recipients, prior [approval must be obtained from MAD or its designee based on an initial treatment plan review. Required documentation must be included with requests for prior approval. Requests for services are prior approved for an initial thirty (30) day period. Services continue only after approval of the comprehensive treatment plan by MAD or its designee. The initial continued stay review must include a copy of a current EPSDT screen. A request for continued stay can be approved for up to

~~three (3) months. Services for which prior approval] authorization may be required from MAD or its designee. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.~~

B. Prior [approval] authorization of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.

C. Providers who disagree with prior [approval] authorization request denials or other review decisions can request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953]. [2/1/95; 3/15/97; 8.322.4.16 NMAC - Rn, 8 NMAC 4.MAD.745.37 & A, 11/1/05]

8.322.4.18 [S E R V I C E

DESCRIPTION: ~~Day treatment fills an essential position in the fundamental arrangement of mental health services. As a non-residential service that is deliberately less medicalized than partial hospitalization, day treatment primarily addresses the therapeutic needs of children and adolescents who are severely emotionally disturbed (SED) and their family systems, who are either transitioning from residential services into lower levels of care, or who are attempting to avoid residential care altogether. In accomplishing this goal, day treatment should offer therapeutic interventions that assist children, adolescents and families to better contain their impulses, to cope with their emotions, and to develop interpersonal skills that will allow them to re-enter or be maintained in school and home settings. Day treatment is distinct from partial hospitalization (see 742.4). The main difference is in the intensity of the programming and proportional mix of mental health professionals. Most of the care in day treatment is rendered by masters level therapists and counselors who are treating recipients who generally have emotional, behavioral, neurobiological or substance abuse problems that compromise their level of functioning. This places them at risk for out of home placement or further clinical deterioration. Frequently other less intensive interventions have failed or are not appropriate for the clinical needs of these recipients. Partial hospitalization is far more medicalized and meant for recipients with complex psychiatric disorders that may require hospital level structure, and close medication management, but do not require twenty four hour continuous and restrictive care. Day treatment for a child or adolescent is conducted in a minimum of four hour/day program, two to five days a week based on the acuity of the clinical~~

~~needs of the recipient and family.]~~
[RESERVED]
[3/15/97; 8.322.4.18 NMAC - Rn, 8 NMAC
4.MAD.745.39, 11/1/05; Repealed,
11/1/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

TITLE 3: TAXATION CHAPTER 13: BUSINESS TAX CREDITS PART 5: TECHNOLOGY JOBS TAX CREDIT

3.13.5.1 **ISSUING AGENCY:**
Taxation and Revenue Department, Joseph
M. Montoya Building, 1100 South St.
Francis Drive, P.O. Box 630, Santa Fe NM
87504-0630
[3.13.5.1 NMAC - N, 10/31/05]

3.13.5.2 **SCOPE:** This part
applies to persons conducting qualified
research at a qualified facility in New
Mexico.
[3.13.5.2 NMAC - N, 10/31/05]

3.13.5.3 **STATUTORY
AUTHORITY:** Section 9-11-6.2 NMSA
1978.
[3.13.5.3 NMAC - N, 10/31/05]

3.13.5.4 **DURATION:**
Permanent.
[3.13.5.4 NMAC - N, 10/31/05]

3.13.5.5 **EFFECTIVE DATE:**
10/31/05, unless a later date is cited at the
end of a section, in which case the later date
is the effective date.
[3.13.5.5 NMAC - N, 10/31/05]

3.13.5.6 **OBJECTIVE:** The
objective of this part is to interpret, exem-
plify, implement and enforce the provisions
of the Technology Jobs Tax Credit Act.
[3.13.5.6 NMAC - N, 10/31/05]

3.13.5.7 **DEFINITIONS:**
[Reserved.]
[3.13.5.7 NMAC - N, 10/31/05]

3.13.5.8 **A M O U N T S CONSTITUTING WAGES TO MEET ELIGIBILITY REQUIREMENTS**

A. In calculating the annu-
al payroll expense and base payroll expense
for purposes of determining eligibility for
the additional credit under Subsection B of
Section 7-9F-6 NMSA 1978, a taxpayer
may include total wages paid to all employ-
ees at a qualified New Mexico facility.
“Wages” as used in Subsection K of Section
7-9F-3 NMSA 1978 means “wages” as

defined under section 3401(a) of the
Internal Revenue Code. Thus, “wages”
used to meet eligibility requirements of the
Technology Jobs Tax Credit Act are the
same as those that are included or will be
included in box 1 of the annual statement of
withholding (form W-2) as required under
Subsection A of Section 7-3-7 NMSA 1978.

B. Example: Taxpayer X
conducts research and development at a
qualified facility in New Mexico. In addi-
tion to wages paid for employees directly
involved in research and development, X
pays wages to administrative personnel at
the facility. Wages paid to administrative
personnel may also be included in annual
payroll expense and base payroll expense
for purposes of determining eligibility for
the additional credit under the Act. Taxpayer X
may not include any expenses
not included as wages on form W-2, such as
expenses for employee health insurance,
retirement plan contributions, or the value
of employee stock options when calculating
annual payroll expense and base payroll
expense.

[3.13.5.8 NMAC - N, 10/31/05]

3.13.5.9 **STATUTE OF LIMITATIONS**

A. A taxpayer must file its
application for approval of a credit within
one year of the end of the calendar year in
which the qualified expenditures were
made.

B. Example: Taxpayer X
makes qualified expenditures from January
1 through October 30, 2005. X must submit
its application for credit under the
Technology Jobs Tax Credit Act by no later
than December 31, 2006.

[3.13.5.9 NMAC - N, 10/31/05]

3.13.5.10 **ELIGIBILITY REQUIREMENTS - ADDITIONAL CREDIT:**

A taxpayer claiming the addi-
tional credit must compute annual payroll
expense for the period specified in the
application and must compute base payroll
expense as of a date one year prior to the
annual payroll date.

[3.13.5.10 NMAC - N, 10/31/05]

History of 3.13.5 NMAC: [RESERVED]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.2.20.7
NMAC, effective 10/31/05.

3.2.20.7 **DEFINITIONS.**

A. **Admission:** An
“admission” to a recreational, athletic or
entertainment event includes the granting of

permission to observe or participate in a
recreational, athletic or entertainment activ-
ity.

(1) Example 1: City C charges a
“greens fee” for use of a public golf course
maintained by the city. Receipts from the
greens fee are admissions.

(2) Example 2: County Y charges
a fee for use of a swimming pool and sur-
rounding area maintained by the county.
Receipts from this fee are admissions.

B. **Agency, institution or instrumentality:**

(1) An agency, institution or
instrumentality includes all parts of the
agency, institution or instrumentality. An
entity which is administratively attached to
an agency, institution or instrumentality is
not thereby part of the agency, institution or
instrumentality. An agency, institution or
instrumentality which is subject to the
supervisory or regulatory authority of
another is not thereby part of the supervising
or regulating entity.

(2) Example 1: The New Mexico
museum of natural history is part of the
museum division of the office of cultural
affairs. The New Mexico museum of natural
history is not an “agency” or “institution”
for purposes of the governmental gross
receipts tax but only a component of an
agency. In contrast, the office of cultural
affairs is administratively attached to the
department of finance and administration.
The office of cultural affairs is not part of
the department of finance and administra-
tion, which merely provides the office with
some administrative support. The office of
cultural affairs is an “agency” for the pur-
poses of the governmental gross receipts
and is responsible for reporting for all of its
components.

(3) Example 2: Under the
Property Tax Code, the taxation and rev-
enue department has general supervisory
power over county assessors and the depart-
ment of finance and administration has cer-
tain enforcement powers relating to county
treasurers. The existence of these authori-
ties does not make either county officer a
part of the superintending state agency.

C. **Entertainment, athlet-
ic or recreational services or events:** The
term “entertainment, athletic or recreational
services or events” includes any recreation-
al, athletic or entertainment activity.

D. **State of New Mexico
and any agency, institution, instrumen-
tality or political subdivision thereof:**

(1) For the purposes of the Gross
Receipts and Compensating Tax Act, the
term “state of New Mexico and any agency,
institution, instrumentality or political sub-
division thereof” includes:

(a) the legislature of the state of
New Mexico and any committee or employ-
ee thereof; examples of committee: the leg-

islative council, the legislative finance committee, the legislative education study committee and any interim committee; staff of such a committee are part of the committee;

(b) the supreme court, court of appeals, district courts, metropolitan courts, magistrate courts, probate courts and any agency thereof; examples of agency: the administrative office of the courts, the judicial standards commission and the compilation commission;

(c) the office of the governor and every state executive agency subject to the authority of the governor; examples of agency: every state cabinet agency, such as the taxation and revenue department, every agency not a cabinet agency whose head is directly responsible to the governor for the operations of the agency, such as the public defender department, whether or not the agency is administratively attached to a state cabinet agency, and every advisory committee established pursuant to Section 9-1-9 NMSA 1978;

(d) every other state executive agency, board, commission or authority whose governing body is a board or commission either elected by the people or appointed by the governor, with or without consent of the Senate, whose actions are not formally subject to the control or approval of the governor, whether or not such agency is administratively attached to a state cabinet agency; examples: the state public regulation commission, the state racing commission, the public service commission, the state personnel board, and the state game commission [~~and the commission on higher education~~];

(e) a state officer other than the governor whose office is created by the state constitution, together with the agency or office such person heads, whether or not the officer is elected or appointed; examples: the secretary of state, the attorney general, the state treasurer, the state auditor, the commissioner of public lands and the state mine inspector;

(f) every executive agency created by the state constitution not included in items c through e above; examples: the state board of education, the state department of education and the department of agriculture;

(g) every health, educational, penal or other institution of the state; every entity controlled or operated by such an institution is part of that institution;

(i) examples of institutions: the entities enumerated in Article XII, Section 11 and Article XIV, Section 1 of the state constitution, community colleges, branch colleges, junior colleges, technical and vocational institutions, area vocational institutions and hospitals not enumerated in Article XIV, Section 11 of the state constitution;

(ii) examples of controlled entities: any newspaper published by a state university or college, whether or not operated as an educational function of the university, or any radio or television stations, the license to operate which is held by an entity or entities described in Section 3.2.20.1 NMAC;

(h) every instrumentality of the state which has the power to levy a tax or assessment, whether the instrumentality was created by the state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: New Mexico beef council, economic advancement districts, irrigation districts, conservancy districts, soil and water conservation districts and flood control districts;

(i) every instrumentality of the state administering state retirement and other programs benefiting employees of the state: examples: the public employees retirement association and its governing board and the educational retirement board;

(j) every instrumentality of the state other than those described in Subparagraph (h) of Subsection D of Section 3.2.20.7 above, whether created by the state constitution or by law, whether the governing power is vested in an officer or a board or commission or whether the officer or members of the board or commission are elected or appointed; examples: the mortgage finance authority, the industrial and agricultural finance authority, the business development corporation and any corporation established under the Educational Assistance Act;

(k) every county of New Mexico, which includes all of its parts, instrumentalities and elected officials; example: a county hospital, regardless of whether operation of the hospital is conducted by another entity under contract, or any entity with power of taxation or assessment authorized to be established with the permission of the county commission or the voters of the county under Article 4 NMSA 1978, such as a county improvement district;

(l) every municipality of New Mexico, whether incorporated under special law or general law, which includes all of its parts, instrumentalities and elected officials; examples: any municipal housing authority, any municipally-owned transit, water, sewer, electric or gas utility, any municipally-controlled organization operating a convention center, any regional planning commission or any entity with power of taxation or assessment authorized to be established with the permission of the governing body of the municipality or the voters of the municipality under Article 3 NMSA 1978, such as a municipal parking authority or

community development agency;

(m) every public school district of New Mexico;

(n) community ditch or acequia associations;

(o) community land grants, whether incorporated or not, which have statutory power of taxation or assessment; and

(p) every other political subdivision of New Mexico, including every component or instrumentality of that political subdivision;

(2) the term "state of New Mexico and any agency, institution, instrumentality or political subdivision thereof" does not include:

(a) organizations created by interstate compact; examples: Cumbres and Toltec scenic railroad commission, multi-state tax commission, interstate agricultural grain marketing commission, western interstate commission for higher education and the council of state governments.

(b) or any entity not created by the state constitution or by law or local ordinance, which has no power of taxation and in which membership is voluntary; examples: New Mexico association of counties, New Mexico municipal league, any union of government employees and any association advancing the professional interests of its members.

[6/28/91, 9/17/91, 10/2/92, 11/15/96; 3.2.20.7 NMAC - Rn, 3 NMAC 2.100.7 & A, 4/30/01; A, 10/31/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.2.220.11 NMAC, effective 10/31/05.

3.2.220.11 **FEED STORAGE:**
[~~The receipts from selling metal~~] Metal bins and similar devices designed to store feed on a farm or ranch, which, in addition to storing, measure and control the flow of livestock, are agricultural implements. Therefore, 50% of the receipts derived from selling those articles may be deducted from gross receipts pursuant to Section 7-9-62 NMSA 1978.

[3/9/72, 11/20/72, 3/20/74, 7/26/76, 6/18/79, 4/7/82, 5/4/84, 4/2/86, 11/26/90, 11/15/96; 3.2.220.11 NMAC - Rn, 3 NMAC 2.62.11 & A, 6/14/01; A, 10/31/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.3.2 NMAC Sections 8 and 10, effective 10/31/05.

3.3.2.8 WITHHOLDING FROM IRREGULAR WAGES

A. Employers who make lump sum distributions, one time bonuses and other irregular payments to employees in addition to regular wages and employers required to withhold tax on fringe benefits for federal purposes shall compute the state withholding in the same manner used for computing federal withholding on these items. The employer will then use the withholding tax tables issued by the department to compute the amount of withholding tax due.

B. If an employer elects to withhold, for federal purposes, a flat percentage of the ~~[lump sum] lump-sum~~ distribution, ~~[one time] one-time~~ bonus, fringe benefits and other irregular wages as provided in the Internal Revenue Code, the employer shall withhold ~~[8.2% of the lump sum distribution, one time bonus, fringe benefits and other irregular wages]~~ a flat percentage for state withholding tax purposes. The flat percentage for state withholding tax purposes shall be a rate equal to the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

[9/8/86, 1/15/97, 12/15/98; 3.3.2.8 NMAC - Rn, 3 NMAC 3.2.8, 12/14/00, A, 10/31/05]

3.3.2.10 WITHHOLDING BY PASS-THROUGH ENTITIES

A. **Withholding by pass-through entities; rate.** For periods beginning on or after January 1, 2004, the rate of withholding by pass-through entities pursuant to the provisions of Subsection D of Section 7-3-12 NMSA 1978 ~~[is 7.1%]~~ shall equal the maximum bracket rate set by Section 7-2-7 NMSA 1978 for the taxable year.

B. **Withholding by pass-through entities; agreements; reasonable cause.** The obligation to collect and remit withholding amounts pursuant to Subsection D of Section 7-3-12 NMSA 1978 may be avoided if the nonresident owner submits to the pass-through entity an agreement authorized by Subsection E of that section in the form and manner prescribed by the secretary. An agreement may be restricted to a single taxable year, may cover multiple years or may be put into effect for an indefinite term subject to revocation by the nonresident owner. An agreement must be in the possession of the pass-through entity at the time the pass-through entity files its return for the taxable year to

which the agreement pertains. When a non-resident owner becomes a resident of New Mexico, the agreement submitted by that owner is revoked automatically, effective for the taxable year in which the change in residence took place. The obligation to withhold may also be avoided if the pass-through entity demonstrates that failure to withhold is due to a reasonable cause pursuant to Subsection B of Section 7-3-5 NMSA 1978.

C. **Due date exception.** The due date specified in Section 7-3-6 NMSA 1978 does not apply to payment of amounts withheld in accordance with Section 7-3-12 NMSA 1978. The due date specified in Section 7-3-12 NMSA 1978 with respect to such amounts controls.

D. **Crediting to tax year.** Amounts withheld pursuant to the provisions of Section 7-3-12 NMSA 1978 with respect to an owner shall be credited to the owner for the same taxable year for which the income is required to be reported for federal income tax purposes.

[12/31/99; 3.3.2.10 NMAC - Rn & A, 3 NMAC 3.2.10, 12/14/00, A, 10/31/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to Section 3.3.12.14 NMAC, effective 10/31/05.

3.3.12.14 C O M P O S I T E RETURNS FOR OWNERS OF PASSTHROUGH ENTITIES

A. For the purposes of 3.3.12.14 NMAC:

(1) "authorized representative" means any of the qualifying owners, the entity the qualified owner is an owner of or the entity's or the qualifying owners' contractor or agent authorized to file composite returns for the qualified owners;

(2) "entity" means a partnership which has not elected to be taxed for federal income tax purposes as a corporation, a limited liability company which is not taxed as a corporation for federal income tax purposes or an S corporation;

(3) "owner" means an individual who is a partner in a partnership which has not elected to be taxed for federal income tax purposes as a corporation, a shareholder in an S corporation or a member of a limited liability company which is not taxed as a corporation for federal income tax purposes; and

(4) "qualifying owner" means an owner who is a not a resident of New Mexico and who has no income from New Mexico sources (including spouse's income on a joint return) other than the owner's share of the entity's income from New

Mexico or the owner's share of income from New Mexico of other entities, the income from which is reported on composite returns.

B. Qualifying owners of a qualifying entity may elect to have the entity file a composite income tax return on behalf of certain individual owners with prior approval of the department on a form prescribed by the secretary. The filing of a composite return by the entity is in lieu of the filing of individual personal income tax returns by each owner included in the return and if properly completed the filing of the composite return shall fulfill the filing requirement for each owner qualified to be included in, and included in, the return.

C. An entity may file a composite return on behalf of its qualified owners if the following conditions are met:

(1) the entity assumes responsibility for payment of any liability of each qualified owner included in the composite return for income tax due to New Mexico for the taxable year for which the return is filed.

(2) all qualified owners included in the composite return report, for federal income tax purposes, on the same fiscal year basis as the fiscal year for which the composite return is being reported.

D. The entity shall exclude from the composite filing any owner who is a resident of New Mexico or who is a non-resident of New Mexico having income from other sources within New Mexico, including any income of a spouse.

E. Corporations shall always be excluded from composite returns filed by any entity. Corporations which are partners in a partnership or members of a limited liability company which partnership or company derives income from New Mexico sources must file, in accordance with the Corporate Income and Franchise Tax Act, a New Mexico corporate income and franchise tax return and must include all sources of income, including income from the partnership or limited liability company, in that return.

(1) A partnership which has elected to report for federal income tax purposes as a corporation may not file composite returns. Each partner of such a partnership shall file separate individual or corporate income tax returns for New Mexico.

(2) A limited liability company which is taxed as a corporation for federal income tax purposes may not file composite returns. Each member of such a company shall file separate individual or corporate income tax returns for New Mexico.

F. The following requirements must be met for an authorized representative to file a composite return on behalf of qualifying owners of an entity:

(1) All qualifying owners includ-

ed in the composite return must authorize in writing the authorized representative to file the New Mexico income tax return on their behalf.

(2) No qualifying owner may be included in a composite return if that owner files an individual New Mexico income tax return for the same taxable year for which the composite return is filed. A qualifying owner may be included in more than one composite return if the qualifying owner has income from more than one entity and does not file an individual New Mexico income tax return for that same year.

(3) The composite return must be accompanied by the following information for each owner of the entity, whether included or excluded from the composite return:

- (a) the name of each owner;
- (b) the owner's address;
- (c) the owner's social security number;
- (d) the income distributed to the owner;
- (e) the owner's percentage of ownership in the entity; and
- (f) a statement of whether the owner is included or excluded from the composite return.

(4) The composite return shall be filed under the name of the entity and shall not be filed under the name of any individual owner.

(5) The entity shall allocate and apportion to New Mexico the income of each owner included in the composite return in accordance with the provisions of the Uniform Division of Income for Tax Purposes Act and the regulations and instructions of the department under the Income Tax Act and under the Uniform Division of Income for Tax Purposes Act. The sum of the income allocable to New Mexico plus the income apportionable to New Mexico shall be divided by the entity's total income. The result, carried to four places in decimal form, will be referred to hereinafter as the "New Mexico ratio".

(6) With respect to taxable years beginning on or after January 1, 1998, to determine the amount due for an owner included in the composite return, apply ~~the rate of 7.7%~~ a rate equal to the maximum bracket rate set by Section 7-2-7 NMSA 1978 to the distribution of entity income to the owner without allowance for exemptions, deductions or rebates of any kind other than the deduction for interest from investments in obligations of New Mexico, the United States or other jurisdictions which states are prohibited from taxing by the laws of the United States. The resulting tax shall be multiplied by the New Mexico ratio. The amount due on the composite return shall be the aggregate amount due for all of the owners included on the return.

G. If it is determined that

an individual owner who was previously included in one or more composite returns had income from sources in New Mexico other than that reported in the composite return or returns, that owner shall file an amended individual income tax return for each year in which the owner was included in a composite return and had income from sources in New Mexico other than that included in the composite return or returns. The individual owner shall receive credit against the tax due on the filing of the owner's amended individual income return for the owner's share of any income tax actually paid to this state with the composite return.

H. The filing of a composite income tax return does not relieve any owner included in the return from any liability for income tax due this state unless the tax due from the individual has actually been paid with the filing of the composite return.

[8/30/95, 1/15/97, 12/15/98, 7/30/99; 3.3.12.14 NMAC - Rn & A, 3 NMAC 3.12.14, 12/14/00, A, 10/31/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 3.5.19 NMAC Section 19, effective 10/31/05.

3.5.19.19 SPECIAL RULES: PUBLISHING: The following special rules are established with respect to the apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material.

A. In General. Except as specifically modified by this regulation, when a person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material has income from sources both within and without this state, the amount of business income from sources within this state from such business activity shall be determined pursuant to the provisions of the Uniform Division of Income for Tax Purposes Act, Section 7-4-1 through 7-4-21, NMSA 1978.

B. Definitions. The following definitions are applicable to the terms contained in this regulation, unless the context clearly requires otherwise.

(1) "Outer-jurisdictional property" means certain types of tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in the business of publishing, licensing, selling or otherwise distributing printed material,

but which are not physically located in any particular state.

(2) "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

(3) "Purchaser" and "subscriber" mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(4) "Terrestrial facility" shall include any telephone line, cable, fiber optic, microwave, earth station, satellite dish, antennae or other relay system or device that is used to receive, transmit, relay or carry any data, voice, image or other information that is transmitted from or by any outer-jurisdictional property to the ultimate recipient thereof.

C. Apportionment of business income.

(1) The property factor.

(a) Property factor denominator. All real and tangible personal property, including outer-jurisdictional property, whether owned or rented, which is used in the business shall be included in the denominator of the property factor.

(b) Property factor numerator. (i) All real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor.

(ii) Outer-jurisdictional property owned or rented by the taxpayer and used in this state during the tax period shall be included in the numerator of the property factor in the ratio which the value of such property that is attributable to its use by the taxpayer in business activities in this state bears to the total value of such property that is attributable to its use in the taxpayer's business activities everywhere. The value of outer-jurisdictional property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the number of uplinks and downlinks (sometimes referred to as "half-circuits") that were used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total number of uplinks and downlinks or half-circuits that

the taxpayer used for transmissions everywhere. Should information regarding such uplink and downlink or half-circuit usage not be available or should such measurement of activity not be applicable to the type of outer jurisdictional property used by the taxpayer, the value of such property to be attributed to the numerator of the property factor of this state shall be determined by the ratio that the amount of time (in terms of hours and minutes of use) or such other measurement of use of outer jurisdictional property that was used during the tax period to transmit from this state and to receive in this state any data, voice, image or other information bears to the total amount of time or other measurement of use that was used for transmissions everywhere.

(iii) Outer-jurisdictional property shall be considered to have been used by the taxpayer in its business activities within this state when such property, wherever located, has been employed by the taxpayer in any manner in the publishing, sale, licensing or other distribution of books, newspapers, magazines or other printed material and any data, voice, image or other information is transmitted to or from this state either through an earth station or terrestrial facility located in this state.

(2) The payroll factor. The payroll factor shall be determined in accordance with Sections 7-4-14 and 7-4-15, NMSA 1978 and the regulations promulgated thereunder.

(3) The sales factor.

(a) Sales factor denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts that may be excluded under NMAC 3.5.19.11.

(b) Sales factor numerator. The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

(i) Gross receipts derived from the sale of tangible personal property, including printed materials, delivered or shipped to a purchaser or a subscriber in this state.

(ii) Except as provided in subparagraph Item iii of Subparagraph b of Paragraph 3 of Subsection C, gross receipts derived from advertising and the sale, rental or other use of the taxpayer's customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer's "circulation factor" during the tax period. The circulation factor shall be determined for each individual publication by the taxpayer of printed material containing advertising and shall be equal to the

ratio that the taxpayer's in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as audit bureau of circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer's books and records.

(iii) When specific items of advertisements can be shown, upon clear and convincing evidence, to have been distributed solely to a limited regional or local geographic area in which this state is located, the taxpayer may petition, or the department may require, that a portion of such receipts be attributed to the sales factor numerator of this state on the basis of a regional or local geographic area circulation factor and not upon the basis of the circulation factor provided by Item ii of Subparagraph b of Paragraph 3 of Subsection C. Such attribution shall be based upon the ratio that the taxpayer's circulation to purchasers and subscribers located in this state of the printed material containing such specific items of advertising bears to its total circulation of such printed material to purchasers and subscribers located within such regional or local geographic area. This alternative attribution method shall be permitted only upon the condition that such receipts are not double counted or otherwise included in the numerator of any other state.

(iv) In the event that the purchaser or subscriber is the United States government or that the taxpayer is not taxable in a state, the gross receipts from all sources, including the receipts from the sale of printed material, from advertising, and from the sale, rental or other use of the taxpayer's customer's lists, or any portion thereof that would have been attributed by the circulation factor to the numerator of the sales factor for such state, shall be included in the numerator of the sales factor of this state if the printed material or other property is shipped from an office, store, warehouse, factory, or other place of storage or business in this state.

[3.5.19.19 NMAC - N, 10/31/05]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is a repeal of Sections 3.13.3.7, 8, 9 and 10 NMAC, effective 10/31/05.

3.13.3.7 **DEFINITIONS**
~~[DEPRECIABLE EQUIPMENT: For purposes of Part 3.13.3 NMAC, "equipment that is depreciable for federal income tax purposes" means equipment depreciated on the books and records of the taxpayer and that the expense of the depreciation shall be reflected on the federal income tax return as a depreciation expense. Equipment depreciated under the accelerated cost recovery system, Internal Revenue Code Section 168, and property for which the taxpayer makes an election under Internal Revenue Code Section 179 shall also qualify for the credit.] [RESERVED]~~

[11/15/99; 3.13.3.7 NMAC - Rn & A, 3 NMAC 13.3.7, 6/29/01, Repealed, 10/31/05]

3.13.3.8 ~~[APPLICATION OF THE CREDIT: The credit allowed by Section 7-9D-7 NMSA 1978 may not be applied against any local option gross receipts tax imposed by a county or municipality.] [RESERVED]~~

[11/15/99; 3.13.3.8 NMAC - Rn, 3 NMAC 13.3.8, 6/29/01, Repealed, 10/31/05]

3.13.3.9 ~~[USED EQUIPMENT: Equipment used at a site outside New Mexico but subsequently imported into New Mexico and installed at a New Mexico call center may be eligible for the capital equipment tax credit if compensating tax was due and paid when the equipment was imported, the equipment was purchased by the operator of the New Mexico call center on or after July 1, 1999, and the equipment is used as required by Subsection C of Section 7-9D-5 NMSA 1978. The valuation of the used equipment for purposes of the Capital Equipment Tax Credit Act is the same as for purposes of the compensating tax.] [RESERVED]~~

[11/15/99; 3.13.3.9 NMAC - Rn & A, 3 NMAC 13.3.9, 6/29/01, Repealed, 10/31/05]

3.13.3.10 ~~[CREDIT NOT TRANSFERABLE:~~

A. Any amount of capital equipment tax credit claimed and approved may be applied by the claimant only against the gross receipts, compensating and withholding taxes owed by the claimant. The credit amount may not be transferred to any other person, including affiliates.

B. Example: Corporation

~~T sets up a call center in New Mexico. T subsequently qualifies for \$50,000 in capital equipment tax credit. After applying \$13,000 to its own gross receipts, compensating and withholding tax liabilities, T creates a subsidiary corporation, S, to own and operate all of T's New Mexico business, including the call center. T may not transfer the \$37,000 remaining authorized capital equipment tax credit to S nor may S apply any of the remaining tax credit to S's gross receipts, compensating and withholding tax liability. T, to the extent T still has gross receipts, compensating and withholding tax obligations, may apply the \$37,000 balance against those obligations.] [RESERVED]~~
 [11/15/99; 3.13.3.10 NMAC - Rn, 3 NMAC 13.3.10, 6/29/01, Repealed, 10/31/05]

End of Adopted Rules Section

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC Sections 9 and 34, effective 10/31/05.

18.19.5.9 PRORATING OF DRIVER'S LICENSE FEES: The fees imposed for the issuance of a driver's license or commercial driver's license may be prorated if the licensure period is shortened pursuant to Section 66-5-19 NMSA 1978. Fees shall be prorated on an annual basis. In no case shall the fee be less than the prorated fee for one full year.
 [18.19.5.9 NMAC - N, 10/31/05]

18.19.5.34 SHORTENING OF LICENSURE PERIOD

A. The division, whenever good cause appears, may issue a restricted license that has a shortened licensure period pursuant to Section 66-5-19 NMSA 1978. The licensure period for a restricted license may be shortened to a period of less than one year depending on the nature of the restriction.

B. Example: Y, who has been issued a New Mexico driver's license, has had a seizure and has informed the motor vehicle division. In order to remain validly licensed in New Mexico, Y must first submit to the division a statement from a licensed physician or licensed osteopathic physician, on the appropriate medical form supplied by the division, attesting that Y has been free of any seizures or episodes for at least one year and either is not under medication or is taking medication without side effects.

[18.19.5.34 NMAC - N, 10/31/05]

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Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 3	July 17
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