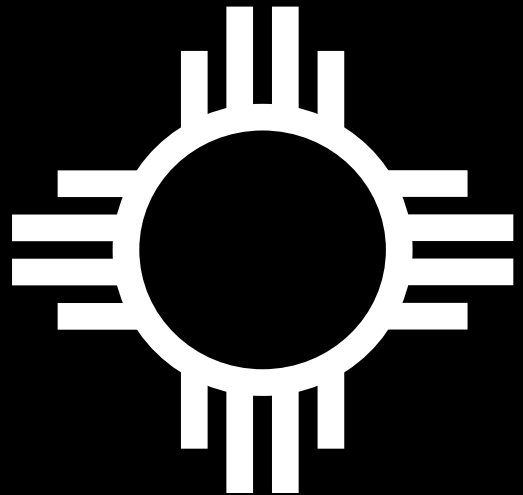


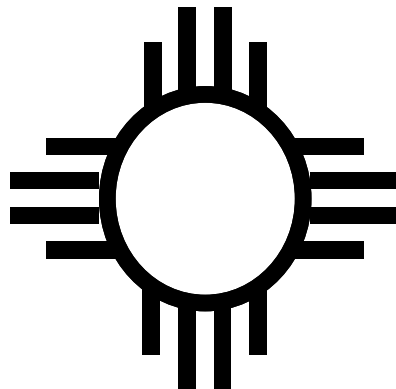
**NEW
MEXICO
REGISTER**



Volume XVI
Issue Number 24
December 30, 2005

New Mexico Register

**Volume XVI, Issue Number 24
December 30, 2005**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2005

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New Mexico Register

Volume XVI, Number 24

December 30, 2005

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

The *New Mexico Register*
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

Notices of Rulemaking and Proposed Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Family Services, will hold a formal public hearing on Monday, January 30, 2006, at 1:30 p.m. in Room 565 of the PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico to receive public comments regarding the repeal and repromulgation of 8.8.3 NMAC Governing Background Checks and Employment History Verification.

The proposed regulation changes may be obtained at www.newmexicokids.org or by contacting Cynthia Pacheco at 505-827-7326. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on January 30, 2006. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to: Cynthia Pacheco, Background Checks Unit, Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502-5160, Fax Number: 505-827-7422, Electronic Mail: cynthial.pacheco@state.nm.us

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Cynthia Pacheco at 505-827-7326. Family Services requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 10:00 a.m., on January 17, 2006, in Room 2022 (Yucca Room), on the second floor in the New Mexico State Library at 1205 Camino Carlos Rey, Santa Fe, New Mexico. The subject of the hearing will be **State Coverage Insurance (SCI)**.

The New Mexico State Coverage Insurance (SCI) program was implemented under the auspices of a Health Insurance Flexibility and Accountability (HIFA) waiver. The program was effective in July 2005, and is tar-

geted to uninsured working individuals of small employers. The department is proposing regulations that would exclude the employer portion of the monthly premium from the cost-sharing maximum, in order to assure that the program is appropriately targeted to the uninsured working population as stated in the waiver application. Various other minor revisions have been made to clarify regulatory language.

Interested persons may submit written comments no later than 5:00 p.m., January 17, 2006, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

NEW MEXICO BOARD OF INTERIOR DESIGN

Legal Notice

Notice is hereby given that the New Mexico Board of Interior Design will convene a Rule Hearing to amend, replace or repeal:

Title 16, Chapter 42, Part 3 Licensing Requirements

This Hearing will be held at Regulation & Licensing, 2550 Cerrillos Road, 2nd Floor, Rio Grande Conference Room, Santa Fe, New Mexico 87504.

Following the Rule Hearing the Board of Interior Design will convene a regular meeting on February 28, 2006.

Copies of the proposed rules are available from the Board office, PO Box 25101,

Santa Fe NM 87504 or phone (505) 476-4865.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by February 7, 2006 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 14 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matter. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

Disabled members of the public who wish to attend the meeting or hearing and are in need of reasonable accommodations for their disabilities should contact the Board Administrator at least one week prior to the meeting.

End of Notices and Proposed Rules Section

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Adopted Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC, Sections 12 and 15, effective December 30, 2005

16.60.3.12 REINSTATEMENT REQUIREMENTS:

A. Requests to reinstate a certificate/license that lapsed or expired as a result of non-renewal shall meet all board prescribed requirements for reinstatement including ~~[past renewal fees, delinquency fees,]~~ the current year's renewal fee and continuing professional education. An individual whose certificate/license has been subject to board disciplinary action pursuant to the Uniform Licensing Act, Sections 61-1-1 to 61-1-31 NMSA 1978, may, upon application in writing and for good cause, request reinstatement of the certificate/license after completion of all requirements contained in the board's original order or agreement.

B. A reinstatement application pursuant to Section 21 of the Act and this rule will be processed by the board upon the basis of the materials submitted in support thereof and supplemented by such additional inquiries as the board may require. For reinstatement of a certificate/license, a hearing may be held, and the board may, at its discretion, impose terms and conditions on an application following procedures the board may find suitable for the particular case.

C. The reinstatement request shall set out in writing the reasons constituting good cause for the relief sought and shall be accompanied by at least 2 supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since board disciplinary action was imposed. In considering a reinstatement application, the board may consider all activities of the applicant since the disciplinary action from which relief is sought was imposed; the offense for which the applicant was disciplined; the applicant's activities during the time the certificate/license was in good standing; the applicant's rehabilitative efforts; restitution to damaged parties in the matter for which the penalty was imposed; and the applicant's general reputation for trust and professional probity.

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

[16.60.3.12 NMAC - Rp 16 NMAC 60.4.11, 02-14-2002; A, 12-30-2005]

16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:

A. The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period ending on the last day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the preceding 36-month period ending on the last day of the certificate/license holder's birth month, with a minimum of 20 hours completed in each year. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be post-marked or hand-delivered no later than the renewal deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE; request an extension for completion of the required CPE; and shall provide a written plan of action to remedi-

ate the deficiency.

(a) The extension request and action plan shall accompany the renewal application.

(b) The provisions of the action plan shall be executed within 60 days of the expiration date of the license.

(c) The board reserves the right not to approve a plan of action or grant an extension.

(d) Although a plan of action may be approved immediately upon receipt, the board reserves the right to levy a fine at a later date for late CPE of \$10.00 per day not to exceed \$1,000.

(e) The board may waive this fine for good cause.

(f) If all CPE requirements are not met within 90 days beyond the expiration date of the license, the license shall be subject to cancellation.

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

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

(8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of ~~[120 hours of CPE in the preceding 36 months before their application will be considered complete.]~~ 40 hours of CPE for each year the certificate/license was expired, not to exceed 200 hours. If the license was expired for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months.

B. Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status.

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Public means any private or public corporate or governmental entity or individual. An individual who holds an inactive certificate/license is prohibited from practicing public accounting and may only use the CPA-inactive designation if they are not offering accounting, tax, tax consulting, management advisory, or similar services either in New Mexico or in another state or country. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided

that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the act; public accountancy means the performance of one or more kinds of services involving accounting or auditing skills, including the issuance of reports on financial statements, the performance of one or more kinds of management, financial advisory or consulting services, the preparation of tax returns or the furnishing of advice on tax matters; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

~~[(a) provide documented evidence of compliance with all CPE requirements of this rule prior to request for certificate/license change of status to "active"; and~~

~~(b) complete board-prescribed change of status forms and remit related fees.]~~

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE for each year the certificate/license was inactive, not to exceed 200 hours; if the license was inactive for longer than 36 months, at least 120 of the hours must have been earned within the preceding 36 months.

(3) The effective date of this provision shall be January 1, 2007. An individual who holds an inactive certificate/license as of January 1, 2006 and expects to be subject to the provisions of this rule shall be permitted to obtain an active certificate/license between January 1, 2006 and December 31, 2006 provided they:

(a) complete board-prescribed change-of-status forms and remit related fees; and

(b) provide documented evidence of 40 hours of CPE earned between January 1, 2005 and December 31, 2006 or complete 120 hours of CPE within the three-year period immediately prior to the date of application for active status, provided that the application is received by the board no later than December 31, 2006.

(4) An individual who obtains an active certificate/license during this transitional period of January 1, 2006 to December 31, 2006 shall not be subject to the provisions of sub-paragraph (b) of paragraph (2) above.

C. Hardship exceptions:

The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

D. Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted;

(d) one-half credit increments are permitted after the first credit has been earned in a given learning activity.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer, discussion leader, speaker or university professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal 1 hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

(a) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(b) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(c) Firms having a system peer review at a location other than the firm's office shall be considered an off-site peer review and will be allowed up to 12 hours of CPE credits.

(d) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(14) For each 3-year reporting period, at least 24 of the hours reported shall be taken outside of the individual's firm, agency, company, organization or normal work setting in a public presentation environment, which is defined as a group program, classroom, live instructor setting in which at least 10 percent of the registered participants are not members, associates, clients, or employees of the firm, agency, company, organization or normal work environment.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

E. Programs not qualifying for CPE:

(1) CPA examination review or "cram" courses;

(2) industrial development, community enhancement, political study groups or similar courses, programs or seminars;

(3) courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning

adhering to the standards prescribed in this rule.

F. Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation and/or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met, the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) An individual who has submitted a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum \$250.00 fine

and any other penalties deemed appropriate by the board as permitted by Section 20B of the act.

(7) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(8) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004; A, 07-30-2004; A, 12-30-2004; A, 04-29-2005; A, 12-30-2005]

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.4 NMAC, Section 10, effective 12-30-2005.

16.60.4.10 PEER REVIEW REQUIREMENTS:

A. Participation: A firm seeking to obtain or renew a firm permit to engage in the practice of public accountancy in New Mexico must undergo a peer review at least once every 3 years beginning with initial firm permit application. Peer review program objectives are established pursuant to Section 131 of the act to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. Emphasis is on education, including appropriate education programs or remedial procedures that may be recommended or required where reporting does not comply with appropriate professional standards.

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

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

B. Reporting to the board: Within 90 days from the scheduled due date of the peer review for those administered by state societies and 150 days for all others, the firm must submit a copy of the interim or conditional or final acceptance letter or

any combination of the above from the administering entity. This must be accompanied by the letter of comments, the reviewer's report, and other supporting documentation as requested by the board.

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

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

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

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

C. Peer review program standards:

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

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

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

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

8.14.1 NMAC, General Provisions, filed 8/15/2005 is hereby repealed and replaced by 8.14.1 NMAC, General Provisions, effective 12/30/2005.

8 NMAC 14.2, Probation and Aftercare, filed 11/2/98 is hereby repealed and replaced by 8.14.2 NMAC, Probation and Aftercare, effective 12/30/2005.

8 NMAC 14.3, Facility Programs, filed 11/2/98 is hereby repealed and replaced by 8.14.3 NMAC, Facility Client Education and 8.14.5 NMAC, Facility Operations, effective 12/30/2005.

8 NMAC 14.5 NMAC, Facility Food Service, filed 11/2/98 is hereby repealed and replaced by 8.14.5 NMAC, Facility Operations, effective 12/30/2005.

8 NMAC 14.6, Facility Safety and Security, filed 11/2/98 is hereby repealed and replaced by 8.14.5 NMAC, Facility Operations, effective 12/30/2005.

8 NMAC 14.7, Facility Rules and Discipline, filed 11/2/98 is hereby repealed and replaced by 8.14.5 NMAC, Facility Operations, effective 12/30/2005.

8 NMAC 14.8, Client's Access to Communication, filed 11/2/98 is hereby repealed and replaced by 8.14.5 NMAC, Facility Operations, effective 12/30/2005.

8 NMAC 14.9, Facility Sanitation and Hygiene, filed 11/2/98 is hereby repealed and replaced by 8.14.5 NMAC, Facility Operations, effective 12/30/2005.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 1 GENERAL PROVISIONS

8.14.1.1 ISSUING AGENCY: Children, Youth and Families Department. [8.14.1.1 NMAC - Rp, 8.14.1.1 NMAC, 12/30/2005]

8.14.1.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile

justice services, of the children, youth and families department.

[8.14.1.2 NMAC - Rp, 8.14.1.2 NMAC, 12/30/2005]

8.14.1.3 STATUTORY

AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended. Chapter 66-1-1 et seq., 66-5-2 et seq., 66-7-3 et seq., 66-7-5 et seq. NMSA 1978 Comp., as amended.

[8.14.1.3 NMAC - Rp, 8.14.1.3 NMAC, 12/30/2005]

8.14.1.4 DURATION:

Permanent.

[8.14.1.4 NMAC - Rp, 8.14.1.4 NMAC, 12/30/2005]

8.14.1.5 EFFECTIVE DATE:

December 30, 2005 unless a later date is cited at the end of a section.

[8.14.1.5 NMAC - Rp, 8.14.1.5 NMAC, 12/30/2005]

8.14.1.6 OBJECTIVE:

To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision and/or in the custody of the department. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients.

[8.14.1.6 NMAC - Rp, 8.14.1.6 NMAC, 12/30/2005]

8.14.1.7 DEFINITIONS:

A. Abuse refers to an intentional, knowing, or reckless act or omission that causes a client to suffer emotional harm, physical injury, or death.

B. Body cavity search refers to the touching or probing of a person's body cavity by licensed medical personnel, whether or not there is actual penetration of the body cavity.

C. Canine search refers to a search by a handler and dog certified to conduct searches.

D. Casework file refers to the client's subfile of all legal, program, treatment referrals and other JJS required documentation for a client receiving JJS services

E. Client refers to a person who is committed to the custody of CYFD's juvenile justice services or who is receiving services from CYFD's juvenile justice services.

F. Communicable disease refers to any infectious disease that is potentially communicable through common

social or sexual contact, and poses a significant health risk if contracted.

G. Corporal punishment refers to any act of inflicting punishment directly on the body, causing pain or injury.

H. Critical self analysis refers to an office of general counsel (OGC) to review a specific serious client or staff related incident.

I. Damage to property refers to intentionally or through negligence, causing partial or complete damage to any real or personal property belonging to another without the consent of the owner.

J. Department refers to the New Mexico children, youth and families department.

K. Designated deputy secretary refers to the deputy the secretary designates to oversee juvenile justice services.

L. Due process refers to procedures which establish notices of allegations, impartial and objective fact finding, the right to counsel, a written record of proceedings, a statement of any disposition ordered with the reasons for it, and the ability to confront accusers, call witnesses, and present evidence.

M. Facility refers to a facility operated by, or on behalf of, CYFD's juvenile justice services, for purposes of housing and providing care for clients committed to the custody of CYFD. Department facilities include: J. Paul Taylor center; New Mexico boys' school, New Mexico girls' school, YDDC, camp Sierra Blanca, and reintegration centers.

N. Foreign national refers to any person who is not a United States citizen.

O. Grievance refers to written complaint initiated by any employee, client, parent, guardian, or custodian and submitted to juvenile justice services staff.

P. Grievance officer refers to staff in each field office or facility designated to receive grievances from clients. The grievance officer investigates the grievance and proposes a resolution or recommends solutions.

Q. Intake refers to the assessment of services and supervision required for an individual referred to juvenile justice services; those activities associated with placing a client on probation, parole or receiving a client at an institution.

R. Intern refers to post secondary student assigned, as part of coursework, to a field office or facility to complete a specific class.

S. Interpreter refers to a person who translates verbally for clients and families conversing in a different language.

T. JPPO: juvenile proba-

tion and parole officer.

U. Juvenile justice services refers to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

V. Master file refers to sub-files within field offices and facilities. For a client referred to or is receiving services from juvenile justice services field office, the master file is composed of two (2) sub-files, the casework file and the behavioral health file. When a client is in a juvenile justice services facility, the master file is composed of five (5) separate sub-files: the casework sub-file, the education sub-file, the medical sub-file, the behavioral health sub-file and the security sub-file.

W. Mechanical restraint refers to a device approved through the behavior management program, used to limit the movement of a client's body for safety reasons.

X. Medical record refers to the client's subfile of all medical services, documentation, treatment, provided to a client at juvenile justice services facilities, as well as any client medical documentation and treatment received from outside providers, medical histories, and screening documentation. The medical record includes psychiatric records and documentation.

Y. Medical research refers biological experimentation involving human or animal subjects.

Z. "Need to know" standard refers to the standard by which individual(s) are identified as required to receive confidential information, based upon risk of transmission of a specific disease.

AA. News media refers to representatives of general circulation newspapers and news magazines sold through newsstands and/or mail subscriptions to the general public; representatives of news programs of radio and television stations that hold federal communications commission licenses; news services that provide material to these news outlets.

AB. Parole refers to the status of a client who has been released from a juvenile justice facility before the end of the client's commitment period. This time of release may be also referred to as aftercare.

AC. Pat down search refers to a visual and manual search of a clothed client and the client's clothing for contraband without the removal of the client's clothing. The client and staff must be the same gender.

AD. Probation refers to a court-ordered sanction and disposition which places an adjudicated client under the

control, supervision, and care of a juvenile probation and parole officer.

AE. Psychological file refers to a client's current and previous psychological assessments, evaluations, emotional screening, cognitive and projective test results, treatment progress notes and aftercare/discharge planning information.

AF. Records disposal refers to the disposal of records of no further value by shredding, burial, incineration, pulping, electronic over write, or any other process resulting in the obliteration of information contained on the record.

AG. Records retention and disposition schedule refers to the document that specifies actions for the retention and disposition of active, inactive, and non-current records for juvenile justice services.

AH. Sealing of records refers to a court order which closes or restricts access to, or purges the record from further public disclosure in accordance with the provisions of the Children's Code Section 32A-2-26, NMSA 1978.

AI. Secretary: refers to the secretary of the New Mexico children, youth and families department.

AJ. Secure facility refers to J. Paul Taylor center, New Mexico boys' school, New Mexico girls' school and youth diagnostic and development center.

AK. Staff refers to employee(s) of CYFD.

AL. Strip search refers to a visual search of a client for contraband, requiring the client to remove all clothing. Client and staff must be same gender.

AM. Superintendent refers to the chief facility administrator at the J. Paul Taylor center, New Mexico boys' school, New Mexico girls' school, or YDDC.

AN. Universal precautions refers to the standardized protocol for the prevention and transmission of communicable diseases.

AO. Use of force refers to the application of physical and/or mechanical intervention utilizing the minimal amount of force necessary to control the situation.

AP. Volunteer: refers to an authorized person who donates time and/or effort to enhance the activities and programs of juvenile justice services. [8.14.1.7 NMAC - Rp, 8.14.1.7 NMAC, 12/30/2005]

8.14.1.8 LEGAL AUTHORITY AND GUIDELINES:

A. The juvenile justice services (JJS) of the children, youth and families department (CYFD) is the state agency authorized by the state legislature to carry out provisions and objectives of the

Delinquency Act, Section 32A-2-1 NMSA 1978.

B. All services and licenses are provided in accordance with federal and state constitutional, statutory and regulatory requirements. Except as otherwise stated, the department and any contractor provide services and licenses without regard to age, gender, race, religion, disability, marital status, or tribal affiliation in accordance with law.
[8.14.1.8 NMAC - Rp, 8.14.1.8 NMAC, 12/30/2005]

8.14.1.9 INTER AGENCY RELATIONSHIPS: The juvenile justice services works with other service programs within the department and other state agencies to enhance the provisions of services to clients.
[8.14.1.9 NMAC - Rp, 8.14.1.9 NMAC, 12/30/2005]

8.14.1.10 JJS COLLABORATION AND COOPERATION: Juvenile probation/parole offices, behavioral health clinicians, juvenile correctional and residential facilities work together to assist one another in providing services to clients.
[8.14.1.10 NMAC - Rp, 8.14.1.10 NMAC, 12/30/2005]

8.14.1.11 REGULATION, POLICY AND PROCEDURES DEVELOPMENT, REVIEW, AND ACCESS:
A. The interpretation and application of these policies and procedures is the sole responsibility of the agency's secretary.

B. Any executive directives or administrative instructions modifying policies and procedures are the sole responsibility of the agency's secretary and designated deputy secretary for juvenile justice services.

C. Juvenile justice services is responsible for reviewing and implementing policies and procedures to reflect changes in practice, to comply with federal and state laws, as well as changes in department philosophy and standards practice. Revisions to policies and procedures are made as provided by statute and regulations.

D. Staff, including supervisory staff, may suggest revisions of policy or procedures. Any suggested revisions to policy or procedures must provide reasons that are based on documented best practice or evidence.

E. Supervisory staff in juvenile justice services offices and facilities are responsible for staff knowing and implementing policies and procedures.

F. Juvenile justice services ensure staff and public are provided automated policies and procedures through the

department's intranet and internet systems. Juvenile justice services staff is responsible for knowing, abiding by and implementing juvenile justice services policies and procedures. Staff may direct any questions about application of policy and procedures to their supervisors.

G. Juvenile justice services holds a public hearing prior to adoption, inclusion, amendment, or repeal of any regulation and/or policy in accordance with the State Rules Act.

H. Upon approval by the secretary, juvenile justice services policies and procedures will be placed on the internet and department's intranet.

I. For good cause, juvenile justice services may issue rules on an emergency basis without notice or hearing if the secretary determines that immediate action is in the public's best interest. An emergency rule is effective for no longer than 30 days unless juvenile justice services, within seven (7) days of the issuance of the emergency rule, complies with the public hearing notice requirements of this section.

J. If an administrative instruction or an executive directive is necessary, juvenile justice services will endeavor to distribute information to persons or agencies affected and to hold a public hearing as required by law at the earliest opportunity.

K. Juvenile justice services staff are not authorized to promulgate policies and procedures.
[8.14.1.11 NMAC - Rp, 8.14.1.11 NMAC, 12/30/2005]

8.14.1.12 RIGHTS AND RESPONSIBILITIES:

A. Clients and families have a right to be treated with respect and recognition of their dignity and need for privacy.

B. Clients and families have a right to participate in decision making regarding their supervision and treatment plan.

C. Clients and families have the right to voice complaints about juvenile justice services, their case manager or the supervision/services provided.

D. Clients and families may make recommendations regarding juvenile justice services policies on clients' rights and responsibilities.

E. Clients and families have a responsibility to provide, to the extent possible, information that juvenile justice services and providers need to provide services.

F. Clients and families have a responsibility to follow the plans of care and action steps they agreed upon with their case managers or team decision mak-

ing (TDM) meeting.

G. Clients and families have a responsibility to participate, to the degree possible, in understanding their legal and behavioral health problems and developing mutually agreed upon treatment goals.

H. Juvenile justice services staff distribute the policy on clients' rights and responsibilities to clients and families.

I. Juvenile justice services have policies and procedures for the timely resolution of client, family complaints and grievances, 8.14.1.14 NMAC.

J. Juvenile justice services protects the confidentiality of client information and records 8.14.1.15 NMAC and 8.14.1.24 NMAC.

K. Juvenile justice services provides information to clients and families that is comprehensible, readable, easily understood and in the language clients and families understand.

L. Juvenile justice services prohibits in policy, procedure and practice corporal or other physical punishment.

(1) Corporal punishment is not permitted for any client in juvenile justice services custody.

(2) Staff are prohibited from using techniques of physical restraints that unduly risk serious harm or needless pain to the client. These techniques include:

(a) restricting respiration in any way, such as applying a chokehold or pressure to a client's back or chest or placing the client in a position that is capable of causing asphyxia;

(b) using any method that is capable of causing loss of consciousness or harm to the neck;

(c) pinning down with knees to torso, head and/or neck;

(d) slapping, punching, kicking or hitting;

(e) using pressure point, pain compliance and joint manipulation techniques, other than the department's approved method for release of a chokehold, bite or hair pull;

(f) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(g) dragging or lifting of the client by the hair or by any type of mechanical restraints;

(h) using other clients or untrained staff to assist with the restraint;

(i) securing a client to another client or to a fixed object;

(j) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the client's behavior is attributable to mental illness and the drug is authorized by a licensed

physician and administered by a licensed medical professional;

(3) degrading punishment or personal abuse;

(4) group punishment for one individual's behavior;

(5) punitive work assignments;

(6) isolation or seclusion, except as appropriate in special circumstances for client safety and only for a limited time as specified in procedures;

(7) chemical/aerosol restraints, except as used by certified law enforcement officers in the performance of their duties; and

(8) mechanical restraints, except as stated in behavior management and crisis intervention, 8.14.1.23 NMAC.

M. Staff are prohibited from using medical care, religious programming, education, recreation and client communication with parents, guardians or legal counsel as a reward or punishment for conduct.

N. Staff report incidents of corporal punishment, abuse and neglect to the chief juvenile probation/parole officer, superintendent or administrative supervisor in accordance to juvenile justice services' policy on notification and reporting, 8.14.1.20 NMAC. Alleged perpetrators of the alleged corporal punishment, abuse and neglect include but are not limited to: parent or guardians, juvenile justice services staff, detention center employees, law enforcement officers, school officials and other department staff.

O. Any parent or guardian of a child in the custody of the department retains all residual rights and responsibilities in accordance with the law concerning that child unless modified by court order. Parents or guardians continue to be financially responsible for the care and custody of the child. If parents are unable to provide financially for their child and the child is receiving services from juvenile justice services, the department will seek alternative funding sources.

P. Juvenile justice clients are held accountable for their behavior in accordance with legal requirements.

Q. Hearings and other review procedures which determine client accountability for behavior are conducted in a fair and impartial manner.

R. Juvenile justice clients may access courts, counsel, and advocacy groups. For facility clients, any contact with counsel is confidential and subject only to the limitations necessary to maintain facility order and security. The reasons for any limitations imposed, must be documented in the client's master file and in FACTS.

S. Juvenile justice clients may communicate with the public media.

Juvenile justice services staff follows juvenile justice services policies and procedures for media access, 8.14.1.30 NMAC. For facility clients, media communications are subject to the limitations necessary to maintain facility order and security. The reasons for any limitations imposed are documented in the client's master file and in FACTS.

T. To ensure the safety of clients and staff, the chief juvenile probation/parole officer prominently posts designated deputy secretary approved guidelines for appropriate client behavior in all juvenile justice services offices.

U. Juvenile justice clients housed in secure facilities are subject to uniform grooming and dress rules. Juvenile justice clients housed in reintegration centers have freedom in personal grooming and dress except when a justified interest exists. In all facilities, clients are permitted to decorate living and sleeping quarters with personal possessions subject to the limitations necessary to maintain facility order and security, including medical, educational, behavioral health program needs and objectives.

V. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.12 NMAC - Rp, 8.14.1.12 NMAC, 12/30/2005]

8.14.1.13 PROVISION OF SERVICES:

A. CYFD and its contractors provide services and licenses without regard to age, race, ethnicity, gender, religion, national origin, disability, marital status, sexual preference, tribal affiliation or political views.

B. CYFD and its contractors provide services that promote and build on individual and family strengths and are provided in the least restrictive setting and most normative environment and are integrated and linked, both within the department and with other child-serving agencies and which use peer, family and other appropriate and available supports.

C. Clients and families have access to a comprehensive array of services that are individualized, community based and, whenever possible, in-home to meet the unique needs and potential of each child and family.

D. Clients and families are provided services that are designed based on evidence and promising or emerging practices to achieve a positive outcome, and which includes an assessment of the risks,

needs and strengths of the client and family.

E. Clients and families have full participation and a voice in the choice of services in all aspects in the planning and delivery of services.

F. Clients, families and the public are provided objective client criteria for juvenile justice services program involvement or program exclusion, consistent with requirements of confidentiality.

G. The department provides probation/parole services 24 hours a day, seven days a week. Juvenile probation and parole offices are open during the lunch hour, 12:00 pm to 1:00 pm. Offices with one staff member have voice mail or answering machine capability and posts contact numbers for the public to use if staff is out to lunch, in court or out of the office.

H. JJS field behavioral health staff provide a copy of their schedule to their immediate supervisor and designated staff in the office they are housed and provide an emergency contact phone number and name of person if staff is out to lunch, in session, or out of the office.

I. TDM meetings are conducted at the scheduled time and in accordance with the professional development bureau training. Accommodations are made to ensure family participation if the family calls to indicate unavoidable delays. Staff makes reasonable efforts to contact the TDM participants if the scheduled TDM begins at a time earlier than indicated on the notice.

[8.14.1.13 NMAC - Rp, 8.14.1.13 NMAC, 12/30/2005]

8.14.1.14 CLIENT COMPLAINTS AND GRIEVANCES:

A. Clients may complain verbally or in writing of an alleged deviation of policies and procedures without fear of punishment or retaliation. During the intake process within the field and facilities, clients and parent/guardians are advised of the grievance process and staff documents the advisement in FACTS and in the client master file.

B. The published process for submitting a grievance is posted in conspicuous places to clients and families in each juvenile probation/parole office and facility living unit.

C. The client complaint and grievance process must be completed in a manner that complies with the exhaustion of the administrative remedies provision of the Prison Reform Litigation Act. All remedies are available to the grievance officer including monetary compensation. No monetary relief can be offered until written approval is received from the office of general counsel and the general services department's risk management division.

D. Staff do not prevent or

discourage clients or parents/guardians from filing grievances.

E. Each office and facility identifies a supervisor to be the grievance officer.

F. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.14 NMAC - Rp, 8.14.1.14 NMAC, 12/30/2005]

8.14.1.15 CONFIDENTIALITY:

A. All CYFD staff, contractors and volunteers maintain confidentiality of information in accordance with the laws and regulations that apply to specific services.

B. Any information concerning a client referred to or receiving services, supervised or in the custody of CYFD, is confidential and may only be released as allowed by law.

C. All records in the custody or control of CYFD, including but not limited to client records are confidential and may only be released as allowed by law.

[8.14.1.15 NMAC - Rp, 8.14.1.16 NMAC, 12/30/2005]

8.14.1.16 CONFLICT OF INTEREST:

CYFD staff do not have primary responsibility for cases in which the staff has a close personal relationship with the client or a principal in a case, or in which a client is a relative. When the above situation occurs, the staff member reports the relationship to the supervisor and another staff member is assigned the case.

[8.14.1.16 NMAC - N, 12/30/2005]

8.14.1.17 COMMUNICABLE DISEASE:

A. Juvenile justice services provides services to individuals at risk of being, or who are, infected with a communicable disease.

B. Clients adjudicated as delinquents or as a youthful offender receiving juvenile sanctions based on offenses involving high risk sexual contact are tested in accordance with the Health and Safety Code, Section 24-2b-5.1.

C. Juvenile justice staff and providers are trained in and utilize universal precautions.

D. Clients can request testing for communicable or infectious diseases.

E. Release of information is in accordance with the "need to know"

standard.

[8.14.1.17 NMAC - Rp, 8.14.1.17 NMAC, 12/30/2005]

8.14.1.18 MEDICAL RESEARCH ON CLIENTS:

It is prohibited to use clients for medical, pharmaceutical, or cosmetic experiments. This does not preclude individual treatment of a client based on his/her need for a special medical procedure that is not generally available.

[8.14.1.18 NMAC - Rp, 8.14.1.18 NMAC 12/30/2005]

8.14.1.19 JUVENILE JUSTICE SERVICES SERIOUS INCIDENT REPORTING:

A. Staff immediately report verbally and in writing to the chief juvenile probation and parole officer, superintendent, or administrative supervisor and the designated deputy cabinet secretary and designated deputy director any serious incidents that compromise the safety, security or emotional well being of clients, staff, visitors or endangers the public.

B. The JJS designated deputy cabinet secretary and the deputy director of facilities review all written and recorded serious incident report documents and determine the need for an external review.

C. Staff who fail to report serious incidents as outlined in the corresponding procedures are subject to disciplinary action including termination.

D. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.19 NMAC - N, 12/30/2005]

8.14.1.20 NOTIFICATION AND REPORTING:

A. Abuse and neglect:

(1) All instances or complaints of alleged or suspected neglect or abuse are reported to the appropriate local law enforcement agency, protective services and the designated deputy secretary immediately upon knowledge of the incident (Section 32A-4-3 NMSA 1978). The notification must be noted in FACTS.

(2) Any employee, who receives any information from any source, personal, other staff members, or clients regarding alleged abuse of any client, must report that information immediately to the chief juvenile probation officer, facility superintendent or administrative supervisor within the shift period in which the information became available. A written description of

the information regarding the alleged abuse must be provided to the chief juvenile probation/parole officer, superintendent or administrative supervisor within 24 hours of receiving the information.

B. Injury, serious illness or death: If a client is in a juvenile justice services facility, a client's parent/guardian is promptly notified of a client's injury, serious illness or death.

C. American Indian clients: When a client is identified as a member of an American Indian tribe, as defined by Indian Child Welfare Act (ICWA), staff notify the appropriate tribal authority, of the client referral and any subsequent referrals. Notification is documented in FACTS. Questions or inquiries regarding American Indian clients are directed to the office of general counsel.

D. Escapes: When a client escapes from a juvenile justice facility, CYFD immediately notifies the children's court judge, the children's court attorney from the jurisdiction from which the delinquent child was committed and the juvenile probation and parole officer who authored the predisposition (Section 31-26-11, NMSA 1978).

E. Release from custody: CYFD notifies each district attorney at least fifteen (15) working days before the delinquent child's release when a delinquent child is scheduled to be released from custody without parole or prior to parole (Section 31-26-12, NMSA 1978).

F. Media access: Juvenile justice services staff complies with the media policy, 8.14.1.29 NMAC. The department's director of communications responds to inquiries from the media. Unless authorized in writing by the designated deputy secretary's office and communications office, staff does not communicate with the media as a representative of the department regarding CYFD matters.

G. Foreign nationals:

(1) Any time juvenile justice services staff determines a client is a foreign national the staff immediately notifies the bureau of immigration and customs enforcement (ICE). Documentation of notification is noted in FACTS and the client's master file.

(2) Juvenile justice services staff shall advise the client they have the right to have their consular official notified. In some cases, as identified in procedure, as well as clients from Mexico, the nearest consular officials shall be notified of the arrest or detention of a foreign national, regardless of the national's wishes. The reason for detention shall not be disclosed. A client's request for asylum in the United States or elsewhere shall not be disclosed to the client's government. Notifications shall include only information on a document

called fax sheet for notifying consular officers of arrests or detention that contains the following information:

- (a) date;
- (b) time;
- (c) embassy or consulate information;
- (d) name of person sending fax;
- (e) office or facility;
- (f) state;
- (g) zip code;
- (h) telephone number;
- (i) fax number;
- (j) date client was taken into custody or committed;
- (k) client name;
- (l) date of birth;
- (m) place of birth;
- (n) passport number;
- (o) date of passport issuance;
- (p) place of passport issuance;
- (q) name of JJS staff member the consular contacts;
- (r) hours that consular can contact the staff member;
- (s) client case number; and
- (t) comments.

(3) When a foreign national dies, consular officials shall be immediately notified.

[8.14.1.20 NMAC - Rp, 8.14.1.19 NMAC, 12/30/2005]

8.14.1.21 USE OF VEHICLES:

A. Authorized drivers:

(1) State vehicles are driven only by authorized drivers and occupied by authorized passengers and only in the furtherance of official state business (GSD 90-202-4.1). Staff members are licensed in accordance with the state of New Mexico traffic laws and motor vehicle division regulations. Only juvenile justice services staff members who have a valid New Mexico driver's license and a current (within four years) defensive driving training certificate are allowed to drive a state car for official business.

(2) The names of these staff members who qualify to transport clients must appear on the list provided to general services division through juvenile justice services.

(3) If a staff member does not appear on the list, the supervisor shall review for a current drivers' license and a defensive driving certificate. If both are not current and valid, the staff member may not drive any CYFD vehicle.

(4) All authorized drivers and passengers must wear a seat belt and obey all other state traffic laws that pertain to the driver and passenger, respectively.

B. Unauthorized drivers:

(1) Juvenile justice services staff with only a driver's license from another

state may not drive a state vehicle.

(2) If staff possess a limited driver's license issued to drive to work, the staff member is not an authorized driver and may not use a state vehicle.

(3) Staff who have their license revoked, suspended or who are charged with driving while intoxicated, must provide written notification to their immediate supervisor within twenty-four (24) hours of the revocation, suspension or driving while intoxicated charge or prior to the start of work, which ever comes earliest. Upon such notification by the staff, the supervisor provides written notification to the designated deputy secretary's office.

C. Transportation of clients referred to or under the supervision of JJS:

(1) Only client's who are "free to leave" may be offered transportation. "Free to leave" may be determined by asking oneself, "if the client got out of the vehicle and walked away would I have to issue a warrant or consider them an escapee?"

(a) Two staff members are required to transport a client, one (1) of whom must be the same gender as the client.

(b) Staff must ensure that the client complies with the traffic laws of the state of New Mexico. They must wear a seat belt and abide by all other laws that pertain to passengers.

(c) Staff may only drive a car that has been inspected in accordance with 8.14.1.22 NMAC.

(d) Transportation for clients should be done for short distances and only when there is no other alternative for transportation. All resources should be exhausted prior to transportation of clients. Parents/guardians are to be considered as a valid resource for transportation. Medicaid clients should use medicaid reimbursed transportation such as safe ride, taxi services or the provider's means.

(2) If clients are not "free to leave" the client is not provided transportation by juvenile justice services probation/parole staff.

D. Transportation of JJS clients in department custody: Facility staff may transport clients committed to the custody of the department for a delinquent act.

(1) Clients in a secure facility require two staff members require to transport, one (1) of whom must be the same gender as the client.

(2) Staff members transporting clients housed in a juvenile justice services secure facility, regardless of type or length of commitment, use mechanical restraints on clients. The superintendent may exempt, in writing, the use of mechanical restraints

for a specific transport. Exemptions from the use of mechanical restraints are allowed in exceptional circumstances, determined on a case-by-case basis.

(a) Staff members transporting clients from a reintegration center do not use mechanical restraints on clients.

(b) Staff may only drive a car that has been inspected in accordance 8.14.1.22 NMAC.

(3) Clients in a secure facility participate in community-based programs when:

(a) preparatory measures, as outlined in procedures, are taken to ensure the client, staff and public safety; and

(b) department approved documents are completed and submitted to the designated deputy secretary/designee for written approval prior to the client's participation in the community based program.

E. Supervisors suspend or revoke the state vehicle operator privileges of a staff member who permits the driving of a state vehicle by an unauthorized driver or who permits the transportation of an unauthorized passenger. Supervisors may impose additional administrative discipline under appropriate department personnel procedures. No prohibition exists under this policy for staff to use or occupy a state vehicle to render emergency aid or assistance to any person in need of same.

F. Juvenile justice services staff do not transport clients in a staff member's personal vehicle or other form of personal transportation. A staff member may use a personal vehicle for official state business with the permission of the supervisor and obtain reimbursement in accordance with department of finance and administration procedures.

G. A copy of the packet provided by juvenile justice services administration, containing the vehicle license number and a list of the staff members allowed to transport, is to be carried in each vehicle used to provide transportation for clients. The list kept in the vehicle must be kept up to date at all times and the drivers of those vehicles managed as per management discretion.

H. Field offices and facilities maintain vehicles in a safe condition. Chief juvenile probation/parole officers, superintendents and administrative supervisors instruct staff to:

(1) keep the state vehicle secure at all times;

(2) use the state credit card for purchases as specified by general services department; and

(3) obey all state traffic laws.

I. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that

staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.21 NMAC - Rp, 8.14.1.20 NMAC, 12/30/2005]

8.14.1.22 SAFETY:

A. Training:

(1) On an annual basis, all juvenile justice services staff attend department approved verbal de-escalation and personal safety classes.

(2) On an annual basis, staff who have direct contact with clients must attend a crisis intervention class.

B. Weapons:

(1) To ensure the safety and security of juvenile justice services clients, staff and citizens, weapons are not carried or used by staff while on duty.

(2) Deadly weapons are not permitted in juvenile justice services offices, facilities or vehicles. Certified law enforcement officers, during the performance of their duties are exempt.

(3) Weapons include but are not limited to:

- (a) firearms;
- (b) tasers or stun guns;
- (c) kubotan;
- (d) pepper spray;
- (e) hand made weapons (shanks);
- (f) nun chucks;
- (g) screw drivers and other maintenance tools;
- (h) chains;
- (i) clubs;
- (j) p-38 can openers; and
- (k) knives/razor blades.

C. Aerosol restraints:

The designated deputy secretary does not permit staff to store or use of aerosol restraints in offices or facilities. Certified law enforcement officers, during the performance of their duties are exempt.

D. Transportation of clients referred to or under the supervision of JJS:

(1) Only client's who are "free to leave" may be offered transportation. "Free to leave" may be determined by asking oneself, "if the client got out of the vehicle and walked away would I have to issue a warrant or consider them an escapee?"

(a) Two staff members are required to transport a client, one (1) of whom must be the same gender as the client.

(b) Staff must ensure that the client complies with the traffic laws of the state of New Mexico. They must wear a seat belt and abide by all other laws that pertain to passengers.

(c) Staff may only drive a car that

has been inspected in accordance with these procedures.

(d) Transportation for clients should be done for short distances and only when there is no other alternative for transportation. All resources should be exhausted prior to transportation of clients. Parents/guardians are to be considered as a valid resource for transportation. Medicaid clients should use medicaid reimbursed transportation such as safe ride, taxi services or the provider's means.

(2) If clients are not "free to leave" the client is not provided transportation by juvenile justice services probation/parole staff.

(3) Under no circumstances are client given transportation in a personal vehicle.

E. Transportation of JJS clients in department custody:

(1) Staff members transporting clients housed in a secure juvenile justice services facility use department approved and issued mechanical restraints on clients. The superintendent may exempt, in writing, the use of mechanical restraints for a specific transport. Exemptions from the use of mechanical restraints are allowed in exceptional circumstances, determined on a case-by-case basis. Prior to transporting a client, staff search a client according to 8.14.1.36 NMAC.

(2) Clients in a secure facility participate in community-based programs when:

(a) preparatory measures, as outlined in procedures, are taken to ensure the client, staff and public safety; and

(b) department approved documents are completed and submitted to the designated deputy secretary/designee for written approval prior to the client's participation in the community based program.

(3) Staff members transporting clients housed in a reintegration center do not use mechanical restraints on clients.

F. State vehicles: State vehicles must have a fire extinguishers and first aid kits with a CPR mask.

G. Field offices: All JJS offices, facilities and facility living units must have first aid kits with a CPR mask.

H. Housing of facility clients: When clients in secure facilities are transported and temporarily housed outside the department's jurisdiction, facility staff reviews such housing arrangements for safety and security.

I. Out-of office home visits:

(1) Whenever possible, at least two staff are required when making client home visits.

(2) Prior to making any home visits, staff interviews clients and families in the office at a minimum to identify house-

hold residents; determine the presence of dogs or other animals, access to gated homes or communities. Staff reviews the New Mexico department of corrections website and sex offender websites to determine if household residents are listed on either websites and notes the review in FACTS.

J. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.22 NMAC - Rp, 8.14.1.21 NMAC, 12/30/2005]

8.14.1.23 BEHAVIOR MANAGEMENT AND CRISIS INTERVENTION:

A. Use of force is restricted to justifiable self defense, protection of others, protection of property, and prevention of escapes. The amount of force is limited to that minimally necessary to control the situation.

B. Force is not used as punishment.

C. Juvenile justice services protects and promotes the rights of each client, including the right to be free from physical or mental abuse, corporal punishment and any physical restraints or seclusion imposed for the purposes of discipline or convenience. Juvenile justice services prohibits in policy, procedure and practice.

(1) Corporal punishment is not permitted for any client in juvenile justice services custody.

(2) Staff are prohibited from using techniques of physical restraints that unduly risk serious harm or needless pain to the client. These techniques include:

(a) restricting respiration in any way, such as applying a chokehold or pressure to a client's back or chest or placing the client in a position that is capable of causing asphyxia;

(b) using any method that is capable of causing loss of consciousness or harm to the neck;

(c) pinning down with knees to torso, head and/or neck;

(d) slapping, punching, kicking or hitting;

(e) using pressure point, pain compliance and joint manipulation techniques, other than the department's approved method for release of a chokehold, bite or hair pull;

(f) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(g) dragging or lifting of the client by the hair or by any type of mechanical restraints;

(h) using other clients or untrained staff to assist with the restraint;

(i) securing a client to another client or to a fixed object;

(j) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the client's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional;

(3) degrading punishment or personal abuse;

(4) group punishment for one individual's behavior;

(5) punitive work assignments;

(6) isolation or seclusion, except as appropriate in special circumstances for client safety and only for a limited time as specified in procedures;

(7) chemical/aerosol restraints, except as used by certified law enforcement officers in the performance of their duties; and

(8) mechanical restraints, except as stated in this policy.

D. Staff are prohibited from using medical care, religious programming, education, recreation and client communication with parents, guardians or legal counsel as a reward or punishment for conduct.

E. Juvenile justice services establish and follow policies and procedures governing the use of behavior management practices including therapeutic holds, physical restraints and seclusion. This includes documentation of each therapeutic hold, physical restraint and seclusion in the client's casework file and FACTS.

F. For those behavior management practices that are allowed for above, juvenile justice services supports their limited and justified use through:

(1) staff orientation and education that create a culture emphasizing prevention of the need for therapeutics holds, physical restraint and seclusion and their appropriate use;

(2) assessment processes, including but not limited to videotaping the event, identifying and preventing potential behavioral risk factors; and

(3) the development and promotion of preventative strategies and use of less restrictive alternatives.

G. On an annual basis, juvenile justice services staff who has contact with clients and families must attend department approved conflict management, verbal de-escalation and personal safety courses.

H. Juvenile justice servic-

es facility staff use only agency approved and trained physical restraint techniques that include but are not limited to department approved methods of manual and mechanical restraints.

I. Juvenile justice services staff, field and facility, may not carry or store chemical agents or any physical restraint device or equipment.

J. Use of restraint equipment in juvenile justice services facilities that constitutes routine uses, i.e., transporting a client, is not considered as use of force unless authorized force was required to apply the restraints.

K. JJS staff are trained on the use of mechanical restraints prior to receiving authorization from the chief JPPO/superintendent/designee to use the department restraints. Staff only use department issued items. Staff whose training is not current (more than one year) is not allowed to use mechanical restraints.

L. Staff complete a written report, using department approved form, when force is used. The form is to be completed prior to the end of shift and submits the form prior to leaving the premises to the superintendent who reviews each form for completeness, accuracy, timeliness, compliance to JJS policies and procedures and signs the forms. The superintendent immediately forwards a copy of the form within to the designated deputy secretary and deputy director for facilities and director of communications. The superintendent reviews each form for completeness, accuracy, and policy compliance and signs the forms.

M. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.23 NMAC - N, 12/30/2005]

8.14.1.24 RECORDS MANAGEMENT:

A. Development of master file for JJS clients:

(1) When a client is referred to juvenile justice services for a delinquent act, a master file is created.

(2) Master files are stored in locked cabinets at all times.

(3) Each file is marked "confidential" as are the file cabinet.

(4) Master file identifiers are the FACTS client number and clients date of birth. No other identifiers shall be used.

(5) Master files are stored and transported in a manner that ensures securi-

ty and confidentiality.

(6) Only those individuals identified in Section 32A-2-22, NMSA 1978 of the New Mexico Children's code may access a client's file.

(7) All documents are filed in the designated section, with similar documents grouped together and in chronological order. The latest information is filed on top of each group of forms in the designated section.

(8) Upon receipt and release of the master file, each office and facility verifies documents are in the designated sections of the file. Unauthorized documentation is removed and filed in the appropriate section by the receiving staff. Duplicate copies of documentation are disposed.

(9) If the master file is not received in the prescribed manner, the receiving JPPO, office or facility notifies their supervisor. The receiving supervisor contacts the sending supervisor to report the non-compliance of the prescribed manner and order of filing.

(10) When documentation in a single file indicates a second file is necessary, a second file is created with all sections labeled in accordance with policy. The original file or first file is marked "#1," while the second file is marked "#2," etc. As documents are received, they are placed chronologically in the most recent file.

B. Creation of master file for clients referred to juvenile probation/parole services:

(1) While the client is under the supervision of a juvenile probation and parole office, the client's master file is maintained at the juvenile probation and parole office that is supervising the client. If the client's probation terminates without the client's entry into a JJS secure facility, the file is maintained at the last juvenile probation and parole office that supervised the client. If the client is thereafter placed in CYFD custody, then information for a casework file is copied and transferred to central intake at YDDC.

(2) The master file is composed of two sub-files, the casework file and the behavioral health file. Juvenile probation/parole services have two types of casework files: an informal casework file and a six-tab formal casework file. Since many clients referred to juvenile justice services receive services without requiring court intervention (filing of a petition) an informal casework file is initially created. When a petition is filed, a formal casework file is created. If a client currently has an informal file when a petition is filed, the documents in the informal casework file are transferred and placed in the designated sections of the formal casework file.

C. Creation of casework

file for clients committed to a JJS facility:

(1) When a client is committed to a juvenile justice services facility for either a term commitment or a diagnostic evaluation, probation and parole copies and sends only those documents unavailable in FACTS to the "records manager" in a sealed envelope. As documents become available in FACTS, the documents are not be copied.

(2) The identified documents for the facility casework sub-file are transported with the client to YDDC and is addressed to the "records manager." The facility records manager/designee is the only person authorized to open the contents of the envelope.

(3) When the newly created confidential facility casework sub-file is not sent to with the client, the JJS field staff mail the required documents, addressed to the "records manager" within two (2) business days, with a certified receipt to assure delivery to YDDC. This policy is utilized when hand delivery of documents is impossible.

D. Creation and development of master file for JJS facility clients:

(1) While a client is in department custody, the client's master file is maintained at the facility where the client resides. The facility master file consists of five separate sub- files: the casework sub-file; the education sub-file; the medical sub-file; the behavioral health sub-file; and the security sub-file. Creation of other files shall be prohibited.

(2) Only documents identified in the procedures are filed in the specific sub file.

(3) Master file sub-files are stored and transported in a manner that ensures security and confidentiality.

(4) Only those individuals identified in Section 32A-3B-22, NMSA 1978 may access a client's file.

(5) The YDDC records manager or designee: creates a casework sub-file for clients committed for a diagnostic evaluation and clients receiving a term commitments and provides copies of the necessary documents to education, medical and behavioral health staff.

E. After CYFD custody ends, the client's master file is maintained at YDDC. However, if the client is paroled, the casework sub-file is returned to the juvenile probation/parole office providing parole supervision.

F. Upon transfer of a client from one facility or office of supervision to another, the master file is transferred promptly.

G. Sealed client hard copy file records are prepared for storage at the state records center in accordance with state statute and the records retention and disposition schedule.

H. Confidentiality and access: Written procedures are developed which govern security of the information and data collection system, including verification, access to data and protection of the privacy of juveniles under the jurisdiction of the department.

I. Information and records management:

(1) Unless otherwise directed in writing from the designated deputy secretary, client information is documented and stored in FACTS, the department's automated client tracking system. Staff who make malicious, false, or unprofessional statements in FACTS regarding a client or other staff are subject to disciplinary action.

(2) Staff have access to and use of an organized system of information collection, storage, retrieval, reporting and review.

(3) Any information system based on accurate and evaluated data is established so that research and timely responses to clients needs and authorized inquiries can be made.

(4) Juvenile justice services collaborates whenever possible, and as authorized by law, with criminal and juvenile justice agencies in the gathering, exchange and standardization of information.

[8.14.1.24 NMAC - Rp, 8.14.1.23 NMAC, 12/30/2005]

8.14.1.25 CHANNELS OF COMMUNICATION:

A. The designated deputy secretary for juvenile justice services, deputy directors, regional administrators, chief juvenile probation parole officers, superintendents and administrative supervisors are responsible for communicating with their staff.

B. Regional administrators, chief juvenile probation officers, superintendents and administrative supervisors are responsible for:

(1) submitting weekly reports to the director's office;

(2) reporting serious incidents to department personnel;

(3) reporting in writing any media requests for information to the director of communications and the designated deputy secretary for juvenile justice services;

(4) knowing, training, posting and implementing the department's mission, vision, and principles;

(5) knowing, training, posting and implementing juvenile justices services policies, procedures and directives; and

(6) managing daily operations.

C. Juvenile justice services staff are responsible for documenting client information in FACTS and the master file.

D. Juvenile justice servic-

es staff have an opportunity to review and submit comments to proposed changes to juvenile justice services policies and procedures in accordance to Regulation, Policy, Procedures, Development, Review and Access, 1.14.1.12 NMAC.

E. Clients have access to staff to discuss issues during business hours.

[8.14.1.25 NMAC - Rp, 8.14.1.24 NMAC, 12/30/2005]

8.14.1.26 STAFF PRE-EMPLOYMENT SCREENING AND LEGAL ASSISTANCE:

A. Employees: JJS shall fingerprint and conduct nationwide criminal history record searches, on all department employees whose jobs involve direct contact with the department clients, including prospective employees and employees who are promoted, transferred or hired into new positions, in accordance with Section 9-2A-8, NMSA 1978. Ex-offenders are not categorically excluded from employment.

B. Medical screening: Employees who have direct contact with clients have a medical screening prior to job assignment, in accordance with state personnel rules.

C. Legal advice: The department provides legal advice and assistance to staff regarding department related issues.

[8.14.1.26 NMAC - N, 12/30/2005]

8.14.1.27 VOLUNTEERS AND INTERNS:

A. JJS fingerprints and conducts nationwide criminal history record searches, on all juvenile justice services volunteers and interns.

B. Chief juvenile probation/parole officers, superintendents and administrative supervisors coordinate volunteer and internship programs. Volunteers and interns follow lines of authority, responsibility and accountability; services may be terminated at will.

C. Volunteers who are certified and licensed to perform professional services may perform such services, so long as such services are clinically indicated and fall within the volunteer's expertise and qualifications.

D. Volunteers and interns complete an appropriate, documented orientation or training program prior to assignment. Records are maintained.

[8.14.1.27 NMAC - Rp, 8.14.1.26 NMAC, 12/30/2005]

8.14.1.28 RESEARCH REQUESTS AND REVIEWS:

A. Juvenile justice services encourage conducting scientific research which contributes to our knowledge about

juvenile delinquency and promotes improvement for the juvenile justice system.

B. Juvenile justice services requires an institutional review board (IRB) The IRB review is conducted based on the US department of health and human service guidelines, *Protecting Human Research Subjects, Institutional Review Board Guidebook*, published by the office for protection from research risks (OPRR).

C. Research proposals, based on sound theoretical foundation, must present viable research questions to be investigated by qualified researchers and/or research organizations in order to be considered for review by the IRB.

D. Except as provided herein, no research project involving contact with clients under the supervision or custody of the department and/or access to confidential information about them is authorized without an IRB review and the designated deputy secretary's permission.

E. Requests from state and federal government agencies for existing data and information collected by the department for program management and evaluation purposes are not subject to IRB review if they are used by those agencies. The data analysis unit receives and assigns those requests to designated staff for appropriate responses.

F. Research and evaluation conducted by the juvenile justice services data analysis unit is deemed necessary for JJS' management purposes and are not subject to the IRB reviews.

G. Data collection and data analysis conducted by juvenile justice services staff for program management and reporting of their daily operations are not subject to IRB review. Prior to the collection of data, development of a database or analysis, juvenile justice services staff requests in writing authorization from the data analysis unit to proceed.

(1) To ensure that the collection of data cannot be collected from FACTS or other authorized JJS databases are meeting the needs of program management and that the analysis is methodologically correct, the data analysis unit reviews and documents in writing the need for data collection, methodology and analysis.

(2) Individuals, other than juvenile justice services staff, responsible for any data collection and data analysis conducted for juvenile justice services staff for program management must comply with the juvenile justice services policies and procedures in accordance to volunteers and interns, 8.14.1.27 NMAC.

[8.14.1.28 NMAC - N, 12/30/2005]

**8.14.1.29
ALS:**

FOREIGN NATIONALS:

A. Referred to juvenile probation and parole:

(1) If at the time of the client's detention, referral, preliminary inquiry (PI) or disposition or supervision it becomes known that the client is a foreign national, the JPPO must immediately notify the bureau of immigration and customs enforcement (ICE). Documentation of notification is noted in FACTS and in the client's master file.

(2) In addition, JPPOS advise the client they have the right to have their consular official notified. In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes.

(a) If the client is detained and is from a county that requires mandatory notification, staff must notify the country's consular officials without delay. Documentation of notification to the consular officials and client must be noted in FACTS and in the client's master file.

(b) If the client is from a country that does not require notification, staff must offer, without delay, to notify the consular officials from the client's country. If the client requests notification, the nearest consular official is notified without delay. Documentation of the notification offer and decision, and notification, if requested, must be noted in FACTS and the client's master file.

(c) Notifications shall include only information contained in Subsection G of 8.14.1.20 NMAC. The reason for detention shall not be disclosed. A client's request for asylum in the United States or elsewhere shall not be disclosed to the client's government.

(d) Consular officials are entitled to access their nationals in detention and are entitled to provide consular assistance.

(3) Staff record maintain a written record of the provision of ICE and consular notification and actions taken in the FACTS.

B. Committed to a JJS facility:

(1) If at the time the client is committed and there is no documented evidence of prior ICE or consular notification, facility staff follow the steps outlined in Subsection A.

(2) Foreign national clients are entitled to communicate with their consular officials.

(a) Communications by a foreign national client to his consular official must be forwarded to the consular post without delay.

(b) Foreign consular officials shall be given access to their nationals and permitted to communicate with them.

(c) A foreign national client does

not have to accept assistance from consular officials representing his country.

(3) A foreign national client is afforded treatment resources available to other juvenile justice services clients at the same security classification.

(a) A client, identified as a foreign national is not eligible for minimum level parole location (home or other community placement) until the client is placed in ICE custody; if ICE informs juvenile justice services it has no interest in the client or does not respond within 90 days of sending the form titled notification of incarceration of a foreign national; or the client reaches his release date.

(b) If ICE informs juvenile justice services of interest in a client after the client becomes eligible for community placement or authorized leaves, the client will lose eligibility and reside in a secure facility.

(4) In anticipation of completion of required release criteria and not less than 45 days prior to the anticipated release date, the releasing authority informs ICE of the pending undocumented foreign national client and requests a residency and deportation status determination within 15 days of receipt of notification. Forty-five (45) days before parole release JJS staff will:

(a) complete the parole release packet and schedule a date for release;

(b) send written notice to the ICE in the region of the release date and request for confirmation of the date and of transportation within 15 days of notification; request that ICE meet with the client prior to the release date; and send a copy of the notice to the supervising JPPO;

(c) notify the receiving supervising JPPO and appropriate consulate of release arrangements and all pertinent information; send the family notification of parole release; and make reasonable attempts to provide translation when necessary; and

(d) send notification of parole release to the appropriate authorities.

(5) On the day of parole release or discharge from commitment, ICE is responsible for transporting the client to a port of entry. If the release of a client is canceled for any reason, the facility caseworker immediately notifies ICE and any other affected parties.

(6) If the client is not deported by ICE or if ICE fails to respond within 15 days of receipt of notification with a date of transportation, the receiving JPPO and facility case manager proceeds with placement options at least 30 days prior to the release date.

(7) The case of a deported client must be transferred to a designated caseload and supervised by a parole officer responsible for the youth in the committing county.

C. Death of a foreign national: Juvenile justice services shall notify in writing the nearest consulate of the county of a foreign national who dies while in a detention or in a juvenile justice services facility.

[8.14.1.29 NMAC - N, 12/30/2005]

8.14.1.30 MEDIA ACCESS:

A. Media inquiries: The department's director of communications responds to inquiries from the media.

B. Disclosure of client information: Department documents and information, pursuant to Section 32A-2-32, NMSA 1978 are confidential and are not released to the public, including to reporters.

C. Disclosure of information on staff: Information on CYFD employees that may be released to the media is limited to:

- (1) name;
- (2) classification;
- (3) salary; and
- (4) length of services with the department or the state.

D. Staff access to media: Unless the designated deputy secretary for juvenile justice services and the director of communication authorizes in writing, staff do not communicate with the media as a representative of the department regarding CYFD matters.

E. Media access to JJS offices and facilities and client access to media: Request for media access to juvenile justice clients and a client's access to the media, will be balanced against the department's duty to protect the client's confidentiality and privacy. The department will promulgate procedures to achieve this goal.

F. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.30 NMAC - Rp, 8.14.1.27 NMAC, 12/30/2005]

8.14.1.31 WAITING LISTS:

Clients and families can withdraw from voluntary or involuntary services. Juvenile justice services may take other actions to ensure client or public safety if safety is a concern as a result of the client or family's withdrawal from services.

[8.14.1.31 NMAC - N, 12/30/2005]

8.14.1.32 CYFD STAFF IDENTIFICATION:

A. Only CYFD photo

identification cards issued through the professional development bureau and shields issued through juvenile justice services are to be used for official CYFD identification.

B. All staff shall wear CYFD photo identification cards during work hours and any time staff is representing the department. CYFD photo identification cards are not adorned or defaced.

C. Staff displaying improper identification for any reason is subject to disciplinary action.

D. The designated deputy secretary is responsible for: ensuring that procedures are developed, maintained and adhered to regarding the issuance of shields; ensuring that all staff who are issued a shield receive a copy of this policy; ensuring appropriate security precautions; authorizing the issuance of shields to the appropriate staff; ensuring the retrieval of shields when necessary; and initiating an investigation regarding misconduct of its use. The designated deputy secretary may appoint a designee at the chief juvenile probation/parole officer level to fulfill the requirements of this policy.

E. A JJS employee who receives a shield is responsible for: reading and adhering to this policy; seeking clarification from the appropriate regional administrator; and surrendering the shield upon termination from the department, or a position that does not require a shield, or when requested by a supervisor.

F. Shields shall be issued to the following staff performing official duties, including: deputy director of field operations, juvenile detention alternatives initiatives detention coordinator, regional administrators, chief juvenile probation/parole officers, juvenile probation/parole officer supervisors, juvenile probation/parole officers, community support officers and other staff as identified by the designated deputy secretary.

G. The designated deputy secretary or designee: issues shields to designated juvenile justice services' staff; maintains appropriate records of shields and department photo identification cards issued; and ensures the security of the documents.

H. The designated deputy secretary or designee is notified, via chain of command, of lost, stolen or destroyed photo identification card or shield and shall initiate an investigation as appropriate.

I. The designated deputy secretary or designee authorizes the replacement of lost, stolen or destroyed photo identification card or shield. Documentation is forwarded, via the chain of command, to the designated deputy secretary using the department approved photo identification and shield form.

J. Juvenile justice servic-

es staff shall not overtly or covertly use their official position, photo identification card, or shield for: personal or financial gain for themselves or others; obtaining privileges not otherwise available to them except in the necessary performance of official business; or avoiding consequences of illegal acts. Such misuse or abuse shall be grounds for termination of employment.

K. An employee shall not lend his photo identification card or shield to another person or permit it to be photographed or reproduced.

L. Juvenile justice services staff carries his photo identification card and shield when appropriate on their person at all times, except when impractical or dangerous to their safety.

M. Juvenile justice services staff makes every effort to ensure the security and safekeeping of their photo identification card and shields at all times. Staff will furnish the photo identification card to any person requesting that information.

N. Juvenile justice services staff assigned photo identification cards or shields are responsible for the proper use and control and for making appropriate reports should the photo identification card or shield become lost, stolen or destroyed.

O. Juvenile justice services staff immediately notifies his supervisor if the photo identification card or shield is lost, stolen or destroyed. The employee and supervisor immediately completes the department approved photo identification and shield form explaining the circumstances surrounding the loss and forwards the report, via the chain of command, to the designated deputy secretary or designee so that appropriate may be taken.

P. If the photo identification card or shield that has been reported lost or stolen is subsequently recovered, prior to the issuance of the replacement, the supervisor notifies the designated deputy secretary or designee, via the chain of command, to disregard the request for a replacement.

Q. Upon termination of employment, the employee's supervisor obtains the photo identification card and shield, attaches them to the department approved photo identification and shield form

R. The designated deputy secretary or designee ensures the appropriate security precautions are taken regarding the preparation and issuance of photo identification cards and shields.

S. Staff who are assigned shields may be held liable and may be required to reimburse the department for the cost of the shield if lost, stolen or damaged due to negligence.

T. Any staff member who

violates this policy will be disciplined according to the department's code of ethics.

[8.14.1.32 NMAC - N, 12/30/2005]

8.14.1.33 CLIENT AND VENDOR IDENTIFICATION:

A. Notwithstanding the provisions of Section 24-14-27, NMSA 1978, prohibiting the photocopying of certificates of birth except as authorized by law, a child or the child's parent or legal guardian will be required to bring a certificate of birth to an interview, and permit the department to photocopy the certificate of birth to enable the department's representative conducting the interview to obtain an authentic record of accurate personal information about a client.

B. CYFD collects legal name, social security and dates of birth for all clients receiving services.

C. CYFD collects the tax identification number of vendors and verifies that the vendor employees who are registered sex offenders do not have access to our clients.

[8.14.1.33 NMAC - N, 12/30/2005]

8.14.1.34 STAFF QUALIFICATIONS AND TRAINING:

A. Juvenile justice staff meets minimum qualifications as determined by their positions and job functions.

B. Juvenile justice staff attend department approved classes. For any training not provided by the department's professional development bureau and prior to any training occurring, trainers must submit a copy of the proposed curriculum, lesson plan and handouts to juvenile justice services and professional development bureau for review and approval.

C. Trainers must successfully complete a training for trainers course and provide documentation of attendance.

D. Juvenile justice staff participate in standardized formal pre-service and annual training as required by CYFD. One hundred percent attendance and participation is required for participants to successfully complete a class. Participants who do not attend all portions of a class do not receive a certificate of attendance until staff attend those missed portions at future classes. Failure to attend mandatory training is grounds for disciplinary action up to and including dismissal.

E. For those courses that are specialized, including but not limited, to suicide intervention, first aid, CPR and behavior management, the staff trainers must provide documented instructor qualifications for these courses.

F. Staff are provided workshop leave for attending approved edu-

cational programs, meetings, seminars and similar work-related activities. Travel expenses are reimbursed in accordance with department of finance administration (DFA) procedures.

[8.14.1.34 NMAC - N, 12/30/2005]

8.14.1.35 CRITICAL SELF ANALYSIS: CYFD may conduct an internal review of any critical situation in which self-analysis is determined to be appropriate.

A. Critical self-analysis is confidential and privileged and not for publication or release.

B. The intent of the critical self-analysis is to evaluate CYFD's internal decision-making process and to make improvements to protect clients and the public or where an event or a series of events may result in potential litigation. The analysis or recommendation section is confidential in order to encourage and foster candid expression of recommendations and advice from personnel who would otherwise temper their remarks because of concern for their own personal interest, safety or reputation.

C. Unauthorized disclosure of critical self analysis documentation and content is grounds for discipline, including termination.

[8.14.1.35 NMAC - Rp, 8.14.1.28 NMAC, 12/30/2005]

8.14.1.36 CONTRABAND CONTROL, SEARCHES AND PRESERVATION OF PHYSICAL EVIDENCE FOR FACILITIES:

A. The superintendent posts designated deputy secretary approved juvenile justice services contraband list and policies and procedures in areas of client use. In addition, the superintendent requires staff responsible for orientation of clients to the facility provide each client with a copy of the designated deputy secretary approved search and contraband policy and procedures. Staff obtains the signature of the client acknowledging receipt of a copy of the policy and procedures.

B. The superintendent provides to staff a copy of the search and contraband policies and procedures for review as part of their orientation and annual training.

C. Facility staff may conduct or authorize searches anytime there is an articulated and documented safety or security issue. Staff may search clients, visitors, other staff, living units and program areas. Searches may be conducted to ensure health, safety and security, to control contraband or to recover missing persons or property. Upon entry to a secure facility, all vehicles and personal belongings are sub-

ject to being searched.

D. Facility staff conduct searches without the use of force. Searches are conducted in a manner that protects the dignity and respect of the person being searched.

E. Facility staff may conduct any of the following searches on clients:

- (1) pat down;
- (2) strip;
- (3) room;
- (4) general area;
- (5) metal detectors (walk-through or wand);
- (6) random; or
- (7) routine.

F. JJS staff document all client searches on a search form. If any contraband is found on the client or in their property, it is noted on the form and filed in their master file and noted in FACTS. Contraband is confiscated.

G. Upon the facility superintendent's request and the designated deputy secretary approval, canine searches are authorized at JJS facilities by trained and certified federal, state and local law enforcement, New Mexico corrections department (NMCD), and military personnel.

(1) JJS facilities may develop agreements with law enforcement, military and NMCD for the use of canine searches at JJS facilities.

(2) Canine searches may not be used in conjunction with a strip or body cavity search.

(3) For safety and security and to minimize interference, clients should not observe or be in close proximity of a canine search.

(4) Upon request of the canine team, JJS facility security staff may accompany the canine team.

(5) Persons are prohibited from harming or interfering in any manner with the canine or the canine team.

H. JJS facilities client searches are required:

- (1) at initial intake;
- (2) prior to movement of client by JJS facility transportation;
- (3) when assuming custody of a client from another JJS facility or external entity;

(4) prior to and return from off campus movement/activity; and

(5) when there is documented reasonable suspicion that a client possesses contraband or other prohibited material.

I. Body cavity searches require prior written authorization from the superintendent; the superintendent notifies the designated deputy secretary of the decision prior to the body cavity search being

conducted. Body cavity searches are not allowed for clients housed in a reintegration center.

J. Staff must document all living unit room, canine, strip and body cavity searches in the master file.

K. Pat down searches are conducted any time staff has reasonable belief that a client may possess contraband or prohibited material. Pat down searches require the following.

(1) Staff conducting the search must be the same gender as that of the client.

(2) Staff use latex gloves to conduct the search.

L. Strip searches are conducted when there is reasonable suspicion that weapons and/or contraband may be found. Strip searches require the following.

(1) A minimum of two staff members perform strip searches, one to observe and one to conduct the search.

(2) Staff conducting and observing a strip search must be the same gender as the client.

(3) Strip searches occur in a private area allowing observation only by staff directly involved in the search. Additional staff may be present nearby to ensure the safety of the person conducting the search but not in an area from which they can view the client.

(4) Staff conducting a strip search may not touch the client.

(5) Strip searches may be part of a routine search at a JJS facility. This requirement may be waived during emergent situations, when the safety of clients and staff is threatened. This includes placing a client on suicide intervention program (SIP) requiring search of clothing. Anytime a strip search requirement is waived, staff documents the reasons for needing to waive the requirement.

M. Body cavity searches are conducted when there is reasonable suspicion that a client possesses contraband undetectable by pat down or strip searches and may be concealed in a body cavity. Prior to requesting the body cavity search, staff must conduct pat down and strip searches. Requests are made in writing to the superintendent and upon written approval of the superintendent a body cavity search is conducted. Staff place the written recommendation for the body cavity search and the written permission of the superintendent in the client's master and medical files. Upon written permission and instruction by the superintendent, a client is taken to the emergency room of a medical or health facility where a physician conducts the body search for contraband using universal precautions, with a medical staff of the same gender as the client present to witness the search and record results.

N. Random searches are conducted in all areas that clients have access to on a scheduled and unscheduled basis. These searches are conducted for the safety and security of the clients, staff and facility, for contraband, sanitation standards and fire and safety hazards.

(1) Staff conducts the search in pairs, one to observe and one to conduct the search.

(2) Staff searches client rooms with the client present, unless the supervisor excludes a client who poses a threat to staff conducting the search or where the client's presence may compromise the integrity of the search. A supervisor excluding a client from witnessing a search documents the reason or reasons in the search report.

(3) Staff conducts and documents the search and submits the report to the juvenile correctional officer manager (JCOM) for review and approval. Upon approval, the search report is returned and filed in the retention file.

O. Staff may request in writing and with the approval of the superintendent the search of a specific room or area if there is reasonable belief of the presence of contraband or prohibited material. After obtaining the written approval of the superintendent, the staff member attaches the authorization for the search to the search report.

(1) In compliance with the above policies, staff conducts and documents the search with the client present if the client does not pose a threat.

(2) Upon completion of the search, staff completes the search report form, attaches the search authorization form and forwards the report to the superintendent for review, signature and retention.

P. Visitors, staff and their personal property may be subject to a search.

(1) Visitor and staff searches must be conducted in a reasonable manner and use the least intrusive method as possible. Staff visually inspects visitors and staff to the facility and their vehicles and manually inspects all items brought in the facility.

(2) Before entering a juvenile justice services facility, visitors and staff may be subject to a search that involves one or more of the following:

(a) use of metal detectors (walk-through or wand);

(b) use of trained canines;

(c) visual inspection of property;

(d) requiring pockets to be emptied; and;

(e) removal and inspection of shoes.

(3) Notice of the search is clearly posted at facility entrances.

(4) Canine searches are used in a manner that preserves personal dignity.

(5) Searches of staff and visitors' belongings are conducted in their presence.

(6) Staff conducting the search may not touch the visitor or staff.

(7) If a visitor or staff member refuses a search or does not pass the metal detector search, staff conducting a search will require a search of visitor or staff property. Visitors may have future visiting privileges or entrance to the facility may be denied, while staff may be subject to other administrative action, as appropriate.

(8) If a visitor or staff brings contraband or prohibited material onto the grounds of the facility, the visitor or staff is denied access until the contraband or prohibited material is removed from the facility grounds.

(9) **Visitors** are prohibited from bringing the following items into a JJS facility:

(a) weapons (as identified in the following section) and personal defense items such as pepper spray;

(b) pornographic materials in any form including magazines, pictures or photographs of scantily clothed or naked people;

(c) gang paraphernalia;

(d) gum;

(e) tobacco or tobacco products;

(f) lighters or matches;

(g) alcohol or illegal drugs;

(h) glues, aerosols, solvents, liquid paper, permanent markers, poisons or any other toxicants;

(i) cell phones or pagers, unless authorized by the designated deputy secretary;

(j) metal nail file or nail clippers;

(k) glass containers;

(l) personal tools;

(m) cellular phones or pagers;

(n) computers;

(o) cameras or video equipment;

(p) walkmans/discmans;

(q) any electronic or digital devices used for music or videos;

(r) gameboys;

(s) x-boxes, games cubes, or play stations; and

(t) any other item perceived by searching staff to be dangerous; the items will be referred to the superintendent or designee and designated deputy secretary for consideration.

(10) The above list of prohibited items is prominently posted at each entrance to a secure facility.

(11) **Staff** are prohibited from bringing the following items into a JJS facility:

(a) weapons (weapons (as identified in the following section) and personal defense items such as pepper spray;

(b) pornographic materials in any form including magazines, pictures or pho-

tographs of scantily clothed or naked people;

- (c) gang paraphernalia;
 - (d) tattoo machines and/or paraphernalia;
 - (e) alcoholic beverages or ingredients used to produce alcoholic beverages;
 - (f) tobacco or tobacco products;
 - (g) lighters or matches;
 - (h) controlled substances and imitation controlled substances, drugs of any type or drug paraphernalia, excluding prescribed medications or over the counter medications in amounts greater than what is needed for twenty-four (24) period;
 - (i) glues, aerosols, solvents, liquid paper, permanent markers, poisons or any other toxicants;
 - (j) cell phones or pagers, unless authorized by the designated deputy secretary;
 - (k) personal computer, unless authorized by the designated deputy secretary;
 - (l) cameras, unless authorized by the designated deputy secretary;
 - (m) personal tools;
 - (n) walkmans/discmans;
 - (o) any electronic or digital device used for music or videos;
 - (p) gameboys;
 - (q) x-boxes, game cubes, or play stations;
 - (r) mouthwash (any type);and
 - (s) yeast.
- (12) Items on the prohibited list may be seized during searches.
- (13) Individual facilities shall not add items to the prohibited list. Request to include additional items on the list must be made in writing to the designated deputy secretary and include a justification for designating an item as contraband. Any suggested contraband revisions must provide reasons that are based on documented best practice or evidence. Any additions to the list shall be applicable to all juvenile justice services secure facilities.

Q. The following items are considered contraband:

- (1) weapons, essential components for making a weapon, any object modified for use as a weapon or items or material capable of use as or manufacture of a weapon including but not limited to:
 - (a) guns;
 - (b) hand made weapons (shanks);
 - (c) nun chucks;
 - (d) screw drivers and other maintenance tools;
 - (e) chains;
 - (f) clubs;
 - (g) tasers or stun guns;
 - (h) kubotan;
 - (i) p-38 can openers;
 - (j) pepper spray; and

- (k) knives/razor blades;
- (2) tattoo machines and/or paraphernalia;
- (3) gang paraphernalia;
- (4) currency, except as allowed by the superintendent;
- (5) alcoholic beverages or ingredients used to produce alcoholic beverages;
- (6) controlled substances and imitation controlled substances, drugs of any type or drug paraphernalia;
- (7) glues, aerosols, solvents, liquid paper, permanent markers, poisons or any other toxicants;
- (8) prescription and over-the-counter medications, unauthorized medications;
- (9) any objects modified for escape, maps or plans;
- (10) unauthorized clothing;
- (11) walkmans/discmans;
- (12) any electronic or digital device used for music or videos;
- (13) gameboys;
- (14) x-boxes, game cubes, or play stations;
- (15) cell phones or pagers;
- (16) cameras;
- (17) keys;
- (18) ink pens;
- (19) watches and other jewelry;
- (20) mouthwash (any type);
- (21) yeast;
- (22) gum;
- (23) personal computers;
- (24) social security cards or id cards of any type, including a driver's license; and
- (25) stolen items.

R. All contraband discovered during searches is confiscated, inventoried, and stored until it is no longer needed as evidence.

(1) The superintendent designates an evidence custodian to maintain contraband in a key-locked secure location and to ensure a chain of custody until the item is no longer needed. The key is accessible only to the superintendent and evidence custodian.

(2) Staff discovering the contraband places the contraband in an evidence bag, completes all information on a form called chain of custody and deposits the bag in a secured drop box.

(3) The evidence custodian initiates a form called chain of custody log for evidence item number to indicate control and maintain control of the evidence until it is no longer needed.

(4) The evidence custodian maintains a form called chain of custody transaction form on each evidence item. The evidence custodian may release evidence for valid reasons related to administrative or legal proceedings.

(5) Final disposition or destruction of contraband is documented on the chain of custody transaction form. After all administrative/legal proceedings have been concluded; the contraband is destroyed and/or disposed in accordance with procedures.

(6) Money seized as contraband is deposited in the trust fund of the client from whom it is taken, unless other ownership can be established. If ownership cannot be established, it will be deposited in the client's account.

(7) If staff confiscates or discovers a weapon or illegal drug, staff immediately informs the superintendent who then contacts the law enforcement agency with jurisdiction. For weapons and illegal drugs, the staff member confiscating or discovering the contraband documents the item on the chain of custody form and retains a copy of the chain of custody form for the records of the facility upon custody of items being accepted by a law enforcement agency.

S. For the safety and security of clients, staff and facility, the superintendent requires at least monthly inspections of the facility grounds and buildings. Inspections and searches for contraband occur after client contact with non-clients or visitors and facility events. Upon completion of the inspection and search staff completes, submits and files a written report with the superintendent.

T. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.36 NMAC - N, 12/30/2005]

8.14.1.37 CONTRABAND CONTROL, SEARCHES AND PRESERVATION OF PHYSICAL EVIDENCE FOR FIELD OPERATIONS:

A. Authorized department personnel are allowed to conduct searches of a client's person and of property used by the client and/or under the client's control as provided for in orders of the court or the juvenile parole board, and as further provided for in procedures where not inconsistent with orders of the court or the juvenile parole board.

B. JJS staff conducting client searches must be the same gender as that of the client.

C. In accordance with procedures, all contraband or material that is prohibited by an order of the court or juvenile parole board, hereafter "prohibited material" that is discovered during searches

is confiscated, inventoried, and stored until it is no longer needed as evidence.

(1) The chief juvenile probation/parole officer designates an evidence custodian to maintain contraband or prohibited material in accordance with procedures.

(2) Final disposition or destruction of contraband or prohibited material is performed in accordance with procedures.

(3) If staff confiscates or discovers a weapon or illegal drug, staff immediately informs the chief juvenile probation/parole officer and contacts law enforcement with jurisdiction. For weapons and illegal drugs that are seized by law enforcement, the staff member confiscating or discovering the contraband documents the item on the department approved chain of custody form and retains a copy of the chain of custody form describing what items were seized by law enforcement.

D. Each chief juvenile probation and parole officer is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

E. Juvenile probation and parole officers shall not assist with searches by law enforcement officers of persons or their property who are not JJS clients. Juvenile probation and parole officers may assist with searches by law enforcement of clients, their residences or their property only when such searches are specifically and directly related to the order of the court or juvenile parole board relating to the juvenile client.

[8.14.1.37 NMAC - N, 12/30/2005]

8.14.1.38 USE OF INTERPRETER AND TRANSLATION SERVICES:

A. CYFD staff and contractors must provide equal access to services and programs for youth and family members, significant to the treatment process, who are limited English proficient (LEP), deaf and blind or deaf or hard of hearing.

B. CYFD receives interpretation or translation services from bi-lingual staff or other authorized persons.

C. CYFD provides oral interpretations or written translations to clients and families.

D. CYFD clients or family members have the right to secure, at their expense, their own interpreter or to designate someone to serve as their interpreter.

E. CYFD operated and contracted organization units must establish juvenile justice service procedures for informing clients and their families of the availability of interpretation or translation services, for documenting the primary lan-

guage of the client and their families and for maintaining documents in languages other than English. The chief juvenile probation and parole officer, superintendent or administrative program supervisor posts in each office or facility multilingual signs which explain the availability of interpreter or translator services.

[8.14.1.38 NMAC - N, 12/30/2005]

8.14.1.39 WARRANTS:

A. Juvenile justice is committed to reducing the number of warrants in the system without compromising public safety or the integrity of the court system.

B. JJS staff make reasonable, affirmative efforts to locate, notify, and produce clients for court appearances and compliance with probation conditions to enhance the functioning of the juvenile justice system and reduce the need for warrants.

C. JJS staff make ongoing documented efforts to locate and produce individuals for whom a warrant has been issued.

[8.14.1.39 NMAC - N, 12/30/2005]

8.14.1.40 SUBSTANCE ABUSE TESTING: Juvenile justice staff is responsible for monitoring chemically dependent clients and other alcohol or drug abusers as: court ordered, identified from medical or behavioral health staff, or as identified or diagnosed on the client assessments.

[8.14.1.40 NMAC - N, 12/30/2005]

8.14.1.41 DRESS CODE:

A. The personal appearance of all JJS employees, including hair, mustaches and beards are maintained in a professional, neat and clean manner.

B. Staff working in central office or in the community is expected to dress professionally and appropriately for their current assignments or specifically scheduled activities.

C. The personal hygiene, grooming, and clothing of JJS staff provide an appropriate role model for JJS clients and families. Staff is not allowed to wear suggestive attire, athletic clothing, shorts, T-shirts, novelty buttons, baseball hats and similar items of casual attire that does not present a businesslike appearance.

D. Uniformed JJS facility staff in the juvenile correctional officer series dress in accordance with JJS Post Order 24.

E. Job-appropriate shoes are worn at all times.

F. Tight, form fitting or revealing clothing is prohibited.

G. Tattoos and body piercings (other than earrings) are not visible.

H. At his discretion, the designated deputy secretary may allow staff

to dress in a casual fashion. On these occasions, staff is expected to present a neat appearance and is not permitted to wear ripped, dirty, well-worn or disheveled clothing or other inappropriate clothing as outlined in the procedures. However, if staff has contact with the public or is representing the department, staff are required to dress in business casual as outlined in the procedures.

I. Staff is allowed to use perfume, cologne or aftershave lotion in moderation.

J. Volunteers and interns follow the dress code for non-uniformed staff in JJS offices and facilities.

K. Supervisors at all levels are responsible for ensuring day-to-day compliance with this policy.

L. Supervisors consider compliance with grooming and dress standards when evaluating staff job performance.

[8.14.1.41 NMAC - N, 12/30/2005]

8.14.1.42 GANG MANAGEMENT:

A. Juvenile justice services provides for and engages clients in pro-social skills development programs and services that work toward diminishing and eliminating gang involvement.

B. JJS staff neither promote nor tolerate gang behavior or activities.

C. JJS staff are prohibited from using their position or authority in promoting client involvement or client management in inappropriate or illegal behaviors or activities including JJS facility activities.

D. JJS staff are subject to disciplinary action, up to and including termination, for any inappropriate contact or relationship with clients or the families of clients, regardless of whether such contact constitutes a prosecutable crime.

E. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.42 NMAC - N, 12/30/2005]

8.14.1.43 CONTACT WITH CURRENT AND FORMER JJS CLIENTS AND FAMILIES:

A. JJS staff will not show partiality toward, or become emotionally, physically, sexually, or financially involved with clients, former clients or the families of clients or former clients.

B. Chaplains, psycholo-

gists and psychiatrists may continue a previously established therapeutic relationship with a former client in accordance with their respective codes of professional conduct and responsibility.

C. JJS staff may not engage in, or allow another person to engage in sexual or sexualized behavior (gestures, demonstrations, etc.) with a client. Regardless of whether force is used or threatened, there is never any such thing as "consensual" sex between staff and clients or staff and client family members.

D. JJS staff are subject to disciplinary action, up to and including termination for any inappropriate contact or relationship with clients or the families of clients, regardless of whether such contact constitutes a prosecutable crime. Physical contact is not required to subject an employee to sanctions for sexual misconduct.

E. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.43 NMAC - N, 12/30/2005]

8.14.1.44 STAFF MISCONDUCT INVESTIGATIONS:

A. Whenever an allegation of JJS staff misconduct is made, or whenever an incident occurs in which it is necessary to conduct an investigation that involves investigating any JJS staff, the chief juvenile probation/parole officer, superintendent, or administrative supervisor is responsible for:

(1) immediately notifying the designated deputy secretary and designated deputy director of the alleged staff misconduct; and

(2) ensuring that internal investigations are not initiated unless the designated deputy secretary or designated deputy director instructs, in writing, the start of an internal investigation.

B. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.44 NMAC - N, 12/30/2005]

8.14.1.45 CHILD ADVOCACY GROUPS:

A. Approved advocacy personnel have access to staff, administra-

tors, clients and client records.

B. Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

[8.14.1.45 NMAC - N, 12/30/2005]

HISTORY OF 8.14.1 NMAC:

Pre-NMAC History: The material in this part replaces the material that was previously filed with the State Records Center and Archives under:

NMYA/CSD 89-I-8, Neglect/Abuse, filed 12/28/89.

NMYA/CSD 89-I-10, Use of Force, filed 12/28/89.

NMYA/CSD 89-I-13, Firearms/Chemical Agent Use, filed 12/28/89.

NMYA/CSD 89-I-15, Client Grievance Procedure; filed 12/28/89.

YDDC/GS 09-04, Criminal Law Violations, filed 5/23/90.

YDDC/GS 13-03, Use of Force, filed 5/23/90.

YDDC/GS 15-01, Equal Opportunities for Juvenile Programs, filed 5/23/90.

YDDC/GS 17-15, Prohibition of Medical Experimentation, filed 5/23/90.

YDDC/GS 17-20, Proper Notifications In Case of Serious Illness, Surgery, Injury or Death, filed 5/23/90.

BS 67-1, Exchanging, Giving, Buying Clothing, filed 5/23/67.

BS 67-2, No Title, filed 5/23/67.

BS 67-3, No Title, filed 5/23/67.

BS 67-4, No Title, filed 5/23/67.

BS 67-5, No Title, filed 5/23/67.

BS 67-6, No Title, filed 5/23/67.

BS 67-7, No Title, filed 5/23/67.

BS 67-8, No Title, filed 5/23/67.

BS 67-9, No Title, filed 5/23/67.

BS 67-10, No Title, filed 5/23/67.

BS 67-11, No Title, filed 5/23/67.

BS 67-12, No Title, filed 5/23/67.

BS 67-13, Workmans Compensation Insurance Report, filed 5/23/67.

BS 67-14, Regarding Compensatory Time and Annual Leave, filed 5/23/67.

BS 67-17, Records Management Disposition Instructions, filed 5/23/67.

BS 67-18, Vehicle Accident Reports, filed 5/23/67.

BS 67-20, Performance Evaluation Policy, filed 5/23/67.

BS 67-21, Performance Evaluation Procedure, filed 5/23/67.

BS 67-24, Students Notification of Parents Regarding Illness or Injury, filed 5/23/67.

BS 67-25, Personnel Observance of Speed Limits, filed 5/23/67.

BS 67-26, Records Management Case

Record File, filed 5/23/67.

BS 67-28, Professional Services, Educational Personnel Teachers Contracts, Qualifications, Salary, and Sick Leave, filed 5/23/67.

BS 67-30, Organization and Management on Premise Sales Soliciting, filed 5/23/67.

BS 67-31, Students Use of Boys Case Files, filed 5/23/67.

BS 67-32, Personnel Political Activities, filed 5/23/67.

BS 67-34, Organization and Management Administrative Minutes of Selected Supervisory Conferences, filed 5/23/67.

BS 67-35, Personnel Dismissal or Demotion of Employees, filed 5/23/67.

BS 67-36, Personnel Payment for Meals, filed 5/23/67.

BS 67-37, Professional Services Students Case Records Confidentiality of Boys Case File Material, filed 5/23/67.

BS 67-39, Organization and Management Firearms on Boys School Property Prohibited, filed 5/23/67.

BS 67-42, Personnel Policy Promotional Procedure, filed 5/23/67.

BS 67-44, Personnel Policy National Guard, filed 5/23/67.

BS 67-51, Organization and Management Use of New Mexico Boys School Facilities, filed 5/23/67.

BS 67-52, Personnel Leave Policy, filed 7/26/67.

BS 67-55, Organization and Management Travel, filed 9/7/67.

History of Repealed Material:

8 NMAC 14.1, General Provisions, filed 11/2/98 - Repealed effective 8/31/2005.

8.14.1 NMAC, General Provisions, filed 8/15/2005 - Repealed effective 12/30/2005.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

TITLE 8	SOCIAL SERVICES
CHAPTER 14	JUVENILE JUSTICE
PART 2	PROBATION AND
AFTERCARE	AFTERCARE

8.14.2.1 ISSUING AGENCY: Children, Youth and Families Department. [8.14.2.1 NMAC - Rp, 8 NMAC 14.2.1, 12/30/2005]

8.14.2.2 SCOPE: This rule applies to the juvenile justice services employees of the children, youth and families department charged with the supervision, and planning functions of probation and parole aftercare.

[8.14.2.2 NMAC - Rp, 8 NMAC 14.2.2, 12/30/2005]

8.14.2.3 STATUTORY

AUTHORITY: Chapters 32A-1-1, et seq., 32A-2-1 et seq., 32A-3-1, et seq., 32A-3A-1 et seq., 32A-4-1 et seq., 32A-6-1 et seq., 32A-7-1 et seq., 32A-9-1 et seq., 32A-10-1 et seq., 32A-11-1 et seq., 32A-12-1 et seq., 32A-13-1 et seq., 32A-17-1 et seq., 32A-21-1 et seq. NMSA 1978 Comp., as amended. Supreme Court Rules: 10-201, 10-202, 10-203, 10-206, 10-207, 10-208, 10-209, 10-211, 10-229, 10-231.

[8.14.2.3 NMAC - Rp, 8 NMAC 14.2.3, 12/30/2005]

8.14.2.4 DURATION: Permanent.

[8.14.2.4 NMAC - Rp, 8 NMAC 14.2.4, 12/30/2005]

8.14.2.5 EFFECTIVE DATE: December 30, 2005 unless a later date is cited at the end of a section.

[8.14.2.5 NMAC - Rp, 8 NMAC 14.2.5, 12/30/2005]

8.14.2.6 OBJECTIVE: To provide for a coordinated continuum of services for the client and family and to establish guidelines for juvenile probation and parole/aftercare functions.

[8.14.2.6 NMAC - Rp, 8 NMAC 14.2.6, 12/30/2005]

8.14.2.7 DEFINITIONS:

A. Absconder refers to a client on probation or parole/aftercare supervision who leaves the jurisdiction without permission, or an escapee or run-away from a placement.

B. Adjudication refers to a judicial determination that a juvenile has committed a delinquent act.

C. Adjudicatory hearing refers to children's court hearing to decide whether the evidence supports the allegations of a petition, i.e., whether a delinquent act has been committed.

D. Affidavit for warrant refers to a sworn statement submitted to the court detailing the basis for the warrant request including information regarding efforts to locate the subject of the warrant.

E. Aftercare refers to supervision and care provided to clients released from juvenile justice facilities and treatment programs.

F. Arrest warrant refers to a warrant issued from district court ordering that a client be taken into custody.

G. Children's court attorney refers to each district attorney who is the ex-officio children's court attorney for the judicial district (Section 32A-1-6A NMSA 1978).

H. Classification refers to an assessment of the client's risk, needs and strengths by which juvenile probation and parole officers determine the level of care and management of clients.

I. Client family baseline assessment refers to a written report by the juvenile probation and parole officer which identifies the client's delinquent history and the strengths and needs of the client and family.

J. Conditional release refers to a client's release from detention under court ordered requirements related to behavior, activities or movement.

K. Delinquent act refers to an act committed by a juvenile that would be designated as a crime under the law if committed by an adult.

L. Detention refers to the temporary care of juveniles alleged to be delinquent who require secure custody in facility certified for that purpose by the department (Section 32A-2-4 NMSA 1978).

M. FINS refers to families in need of services (Section 32A-3A-2 NMSA 1978).

N. Informal probation refers to a period of voluntary non-judicial supervision that does not exceed a specified duration. Conditions for successful completion of the period of informal supervision are defined in the individualized plan of care.

O. Intake refers to the assessment of services and supervision required for an individual referred to juvenile justice services; those activities associated with placing a client on probation, parole or receiving a client at an institution.

P. Interstate compact on juveniles refers to a voluntary agreement between the states and territories of the United States to provide for the welfare and protection of juveniles and the public with respect to supervision of delinquent juveniles on probation or parole, the return of delinquent juveniles who have escaped or absconded, the return of non-delinquent juveniles who have run away from home, and additional measures for the protection of juveniles and the public (Section 32A-10-1, NMSA, 1978).

Q. Parole refers to the status of a client who has been released from a juvenile justice facility before the end of the client's commitment period. This time of release may be also referred to as aftercare.

R. Petition refers to a legal document in which the state formally alleges the client to be a delinquent or a youthful offender due to the commission of a delinquent act(s), or of a family subject to FINS.

S. Plan of care refers to a plan for treatment or supervision of clients in the custody of, or under the supervision

of, CYFD.

T. Preliminary inquiry refers to conference between the JPPO, client, parent or guardian to assess whether a referral to the CCA should be made to file a delinquency petition.

U. Probation refers to a court-ordered sanction and disposition which places an adjudicated client under the control, supervision, and care of a juvenile probation and parole officer.

V. Referral refers to a report alleging delinquency or families in need of services (FINS) which comes from law enforcement, schools, JJS facilities, parents or citizens.

W. Retake warrant refers to the document issued by juvenile justice services, directed to law enforcement and department staff to detain a client alleged to have violated conditions of parole, and return the client to YDDC.

X. Supervision plan refers to the probation or parole agreement and the plan of care.

[8.14.2.7 NMAC - Rp, 8 NMAC 14.2.7, 12/30/2005]

8.14.2.8 SUPERVISION OF FIELD STAFF: The department provides probation/parole services 24 hours a day, seven days a week.

[8.14.2.8 NMAC - Rp, 8 NMAC 14.2.8, 12/30/2005]

8.14.2.9 INTAKE AND DETENTION:

A. Juvenile justice services staff screen, assess, and recommend disposition on referrals to the appropriate authority. Supervisors review staff referral decisions.

(1) JJS staff date stamps the referral when the office receives the referral from law enforcement.

(2) If the client is not detained, the preliminary inquiry (PI) shall be conducted within thirty calendar days of receipt of the referral from law enforcement. The thirty calendar day time period may be extended upon determination by the department that an extension is necessary to conduct a thorough preliminary inquiry and that the extension is not prejudicial to the best interests of the client. Within two business days of the completion of the preliminary inquiry, probation and parole services shall forward information therein to the children's court attorney.

(3) If the client is detained prior to conducting a preliminary inquiry (PI), the juvenile probation and parole officer gives reasonable notice to the client's parent, guardian or custodian or the child's attorney and an opportunity to be present at the preliminary inquiry.

B. At the commencement

of the preliminary inquiry, the juvenile probation and parole officer shall advise the client, parent, guardian, or custodian of the client's basic rights.

(1) The client has the right to remain silent. If the client is questioned, the client has the right to refuse to answer any questions and may stop answering questions at any time.

(2) A child alleged to be a delinquent or in need of supervision has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communication, either oral or written, between the child, parent, guardian or custodian and a probation officer which is made during the course of a preliminary inquiry (Rules of Evidence 11-509B NMRA).

(3) The client has the right to be represented by an attorney present at the PI and have an attorney present at all court proceedings against the client. If the client does not have an attorney for court proceedings, an attorney will be appointed.

(4) If the client is thirteen years or older, a statement made by the client can be used against the client only if the constitutional rights have been explained to the client, and the client knowingly and voluntarily waived his constitutional rights.

(5) The state is not entitled to use against the client: a statement made out of court which is constitutionally inadmissible; evidence illegally seized or obtained or a statement or admission made out of court, unless it is corroborated by other evidence; and no confession, statements, or admissions may be introduced against a child, under the age of thirteen (13) years on the allegation of the petition.

(6) If the client is under the age of thirteen years and is charged or adjudicated as a delinquent child, the client may not be finger printed or photographed for identification purposes without a court order.

(7) If the client does not have a parent, guardian or custodian appearing on the client's behalf, or the client's interest are in conflict with his parent, guardian or custodian, the client may request appointment of a guardian by the court.

(8) If the child is taken into custody and detained, then the client has a right to a judicial determination of probable cause by a judge, special master, or magistrate court within forty-eight (48) hours including Saturdays, Sundays and legal holidays.

(9) The client may introduce evidence on his own behalf, confront and cross-examine witnesses testifying against him, have witnesses of his choosing subpoenaed, and may admit or deny the charges in the petition.

C. After the completion of

the preliminary inquiry on a delinquency complaint involving a misdemeanor, probation services may notify the children's court attorney and recommend an appropriate disposition for the case. If the child has been referred for three or more prior misdemeanors within two years of the instant offense, probation services shall notify the children's court attorney and recommend an appropriate disposition for the case.

D. Juvenile justice services shall notify the children's court attorney of the receipt of any complaint involving an act that constitutes a felony under the applicable criminal law (Section 32A-2-5, NMSA, 1978). Juvenile justice services shall also recommend a disposition to the children's court attorney.

E. An Indian child's tribe is notified when referred to the department. Staff consults and exchanges information with the tribe when preparing reports or placement of an Indian child is contemplated or ordered.

F. Staff may provide informal probation supervision for clients.

G. The use of detention is limited to cases involving protection of the public, prevention of self injury, transfer to another jurisdiction, and the risk of the client absconding (Sections 32A-2-11 and 32A-2-12, NMSA 1978). If a child under the age of eleven poses a substantial risk to harm to himself or others, a peace officer may detain and transport the child for an emergency mental health evaluation and care.

(1) Staff utilize the detention screening tool. Staff notify the parents/guardians/custodians of a child's detention within 24 hours of detention and the children's court within 48 hours of detention.

(2) Staff release a client from detention within the time frame and conditions defined in supreme court rules and state statute.

(3) If the client is detained prior to conducting a preliminary inquiry, the juvenile probation and parole officer gives reasonable notice to the client's parent, guardian or custodian and the child's attorney and an opportunity to be present at the preliminary inquiry.

H. Clients ordered detained are placed in department certified juvenile detention facilities.

I. At the detention hearing, staff recommends conditional or unconditional release from detention for a client for whom the district attorney/children's court attorney has filed a petition.

J. Staff reviews the need for continued detention of a client and makes recommendations to the children's court regarding the release of the client

when detention is no longer required.

K. JJS staff visits clients remaining in detention at least weekly. Such contacts are made in person, whenever possible, and documented.

L. Release is based on client needs, available resources and any applicable conditions.

[8.14.2.9 NMAC - Rp, 8 NMAC 14.2.9, 12/30/2005]

8.14.2.10 FAMILIES IN NEED OF SERVICES: Juvenile justice services accesses available department and local resources for providing FINS services.

[8.14.2.10 NMAC - Rp, 8 NMAC 14.2.10, 12/30/2005]

8.14.2.11 PREDISPOSITION INVESTIGATION AND BASELINE ASSESSMENT:

A. After a petition has been filed and either a finding with respect to the allegations of the petitions has been made or a notice of intent to admit the allegations has been filed, the court may direct juvenile justice services or an appropriate agency designated by the court to write a predisposition study and report. Juvenile justice services provide court ordered predisposition reports to the parties and the court five business days before the actual disposition or sentencing (Section 32A-2-17, NMSA 1978). A predisposition report contains timely and accurate data so the court orders the most appropriate disposition.

B. The department shall prepare a predisposition report for:

(1) a serious youthful offender who is convicted of an offense other than first degree murder;

(2) a youthful offender concerning the youthful offender's amenability to treatment; or

(3) a delinquent offender.

C. If the court does not order a pre-disposition report, juvenile justice services prepares a client family baseline assessment (CFBA), the appropriate structured decision making tools and the plan of care according to established procedures. Supervisors review the procedures and practices for predisposition investigations, preparation of baseline assessments, and recommendations for disposition.

D. Baseline assessments, or any other reports used for compiling and reporting predisposition information, are not initiated until the client has been adjudicated delinquent, unless the client, with the advice of counsel, consents to the investigation prior to adjudication. Information from the report is not disclosed to the court before the adjudicatory hearing.

E. Documents not avail-

able in FACTS are delivered promptly to YDDC when a client is committed. Whenever possible, staff access FACTS to obtain the most recent client information. Follow-up information such as home studies or updates are submitted to the facility at the earliest possible time after request.

F. Assessments, evaluations and other reports are confidential and released only as allowed for by law (Section 32A-2-32, NMSA 1978).

G. Staff other than juvenile probation and parole officers may be used to collect information in the preparation of the predisposition report. [8.14.2.11 NMAC - Rp, 8 NMAC 14.2.11, 12/30/2005]

8.14.2.12 SUPERVISION OF PROBATION AND PAROLE CLIENTS:

A. The juvenile probation/parole officer supervises and provides assistance to a child placed on probation by a court order or on parole as ordered by the juvenile parole board.

B. Targeted case management — All clients on formal probation are evaluated for participation in targeted case management (TCM).

C. Classification of clients:

(1) Classification determines the level of supervision.

(2) Cases are reviewed at regular intervals and reclassified as warranted.

(3) In cases in which probation is a primary or alternative recommendation for disposition, staff identify any special conditions needed to provide a rehabilitative supervision plan for the client and family, and recommends that the conditions be included along with the generally imposed conditions of probation.

D. Supervision plan:

(1) Supervision plans are developed by staff and includes the input of the client, parents/guardians/ custodians, and are considered part of the baseline assessment.

(2) The conditions of probation are furnished in writing to the client and his parent/guardian/custodian and are acknowledged in writing.

(3) Clients are supervised by field staff according to the court order, probation/parole agreement, the classification tool, and the plan of care. The plan of care is developed by staff, together with the client and his/her family, when possible.

(4) Supervisors review cases and documents the review.

(5) The client's parent/guardian/custodian is notified in advance of a decision to institute a major change, unless emergency conditions necessitate immediate implementation of the changes.

(6) Reasonable efforts are made to utilize local services prior to recommending institutionalization to the court.

(7) Staff provides information to law enforcement agencies in apprehending juveniles known or suspected of being involved in delinquent or criminal activity.

E. Searches:

(1) Authorized department personnel are allowed to conduct searches of a client's person and of property used by the client and/or under the client's control as provided for in orders of the court or the juvenile parole board, and as further provided for in procedures where not inconsistent with orders of the court or the juvenile parole board.

(2) JJS staff conducting client searches must be the same gender as that of the client.

(3) In accordance with procedures, all contraband or material that is prohibited by an order of the court or juvenile parole board, hereafter "prohibited material" that is discovered during searches is confiscated, inventoried, and stored until it is no longer needed as evidence.

(a) The chief juvenile probation/parole officer designates an evidence custodian to maintain contraband or prohibited material in accordance with procedures.

(b) Final disposition or destruction of contraband or prohibited material is performed in accordance with procedures.

(c) If staff confiscates or discovers a weapon or illegal drug, staff immediately informs the chief juvenile probation/parole officer and contacts law enforcement with jurisdiction. For weapons and illegal drugs that are seized by law enforcement, the staff member confiscating or discovering the contraband documents the item on the department approved chain of custody form and retains a copy of the chain of custody form describing what items were seized by law enforcement.

(d) Juvenile probation and parole officers shall not assist with searches by law enforcement officers of persons or their property who are not JJS clients. Juvenile probation and parole officers may assist with searches by law enforcement of clients, their residences or their property only when such searches are specifically and directly related to the order of the court or juvenile parole board relating to the juvenile client.

(e) Each chief juvenile probation and parole officer and facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

F. Transfer:

(1) Transfer of client supervision

between counties can occur.

(2) Client transfers to and from out of state jurisdictions occur; transfers are done according to the interstate compact on juveniles.

G. Community placement programs:

(1) Staff refer clients to appropriate community programs for services identified in the plan of care, determine the availability of the treatment services and inform the court or juvenile parole board when services are unavailable.

(2) Juvenile probation and parole officers meet regularly with treatment providers to review client progress.

H. Out of home placements:

(1) Staff recommend out-of-home placements to the court or parole board after efforts have been made to maintain or return the client to his home or if required, to protect the community. Every reasonable effort is made to involve client and parent/guardian/custodian in any discussion regarding out-of-home placement.

(2) The department facilitates transition to the home.

(3) Staff continue face-to-face contact with clients who are in out-of-home placement.

I. Probation or parole revocation:

(1) Clients alleged to have violated the conditions of supervision may be placed in detention, provided the detention screening tool so indicates and the criteria for detention in state statute are met.

(2) Staff investigate arrests, complaints, and alleged violations of conditions of supervision.

(3) Staff make and document recommendations to the district attorney/children's court attorney, juvenile parole board, and the court to revoke the client's probation or parole, when the client has failed to comply with any part of the probation or parole agreement, and it is in the best interest of the client's rehabilitation to do so.

(4) Staff utilize community resources and intervention measures before recommending out of home placements.

(5) Staff aid in the location and recovery of absconders by initiating arrest or retake warrants, and notifying law enforcement authorities of the possible locations of absconders.

(6) A recovered absconder who has not committed a new delinquent act, and who is not viewed as a danger to the community, may be restored to active supervision.

(7) When a client violates parole conditions, a preliminary parole revocation hearing is conducted, unless the client waives his/her right to the hearing. The hearing officer records and prepares a writ-

ten summary of the major issues, findings and decisions of that hearing. The summary is provided to clients.

J. Termination of client supervision:

(1) Recommendations for early release or termination of supervision of a client under supervision are reviewed and approved by the chief juvenile probation and parole officer or designee with notice to the courts or the juvenile parole board. Early termination of supervision may be recommended in the following cases:

(a) when progress toward rehabilitation is made and the goals as set forth in the plan of care are completed;

(b) when probation or parole is unsuccessful and because of age or status, commitment to a department facility is of no benefit to the client; or

(c) when public safety is not expected to be compromised by the termination or early release from supervision.

(2) Staff summarize in writing client performance during the period of supervision and provide the report to the court or juvenile parole board.

(3) As a part of the plan of care, the juvenile probation and parole officer develops, in collaboration with the client and service providers, a discharge plan. JJS staff invite the parent/guardian/custodian to participate. The discharge plan is prepared prior to the client's termination from supervision.

[8.14.2.12 NMAC - Rp, 8 NMAC 14.2.12, 12/30/2005]

8.14.2.13 RELEASE BY JUVENILE PAROLE BOARD: Juvenile justice services provides client information to the juvenile parole board in a timely manner.

[8.14.2.13 NMAC - Rp, 8 NMAC 14.2.13, 12/30/2005]

HISTORY OF 8.14.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

NMYA/CSD 89-I-5, Juvenile Probation Services, filed 12/28/89.

NMYA/CSD 89-I-9, Illegal Aliens, filed 12/28/89.

NMYA/CSD 89-I-6, Juvenile Parole Services, filed 12/28/89.

NMYA/CSD 89-I-11, Taking Into Custody, filed 12/28/89.

NMYA/CSD 89-I-12, Search and Seizure, filed 12/28/89.

NMYA/CSD 89-I-14, Use of Clients as Informants, filed 12/28/89.

NMYA/CSD 89-III-1, Intake, Preliminary Inquiry, Predispositional Report/Preadjudicatory Report, JPPO Role in Final Court Disposition, CHINS Process,

Traffic Law Violations, filed 12/28/89.

NMYA/CSD 89-IV-6, Restitution, filed 12/28/89.

NMYA/CSD 89-IV-10, Probation Revocation, filed 12/28/89.

NMYA/CSD 89-IV-11, Probation Warrants, filed 12/28/89.

NMYA/CSD 89-IV-18, Substance Abuse Screening (Probation and Parole), filed 12/28/89.

NMYA/CSD 89-IV-19, Pre-Parole Planning, Home Study, Parole Intake, filed 12/28/89.

NMYA/CSD 89-IV-21, Parole Warrants and Parole Detention, filed 12/28/89.

NMYA/CSD 89-IV-22, Parole Revocation, filed 12/28/89.

NMYA/CSD 89-IV-23, Parole Termination, filed 12/28/89.

History of Repealed Material:

8 NMAC 14.2, Probation and Aftercare, filed 11/2/98 - Repealed effective 12/30/2005.

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

JUVENILE JUSTICE DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 3 FACILITY CLIENT
EDUCATION**

8.14.3.1 ISSUING AGENCY: Children, Youth and Families Department.

[8.14.3.1 NMAC - Rp, 8 NMAC 14.3.1, 12/30/2005]

8.14.3.2 SCOPE: This rule applies to clients and employees of the juvenile justice services of the children, youth and families department.

[8.14.3.2 NMAC - Rp, 8 NMAC 14.3.2, 12/30/2005]

8.14.3.3 S T A T U T O R Y

AUTHORITY: Chapters 32A-1-1, et seq., 32A-2-1 et seq., 32A-3-1, et seq., 32A-3A-1 et seq., 32A-4-1 et seq., 32A-6-1 et seq., 32A-7-1 et seq., 32A-9-1 et seq., 32A-10-1 et seq., 32A-11-1 et seq., 32A-12-1 et seq., 32A-13-1 et seq., 32A-17-1 et seq., 32A-21-1 et seq., 33-9A-1 et seq. NMSA 1978 Comp., as amended. P.L. 89-133, P.L. 94-142, P.L. 89-199.

[8.14.3.3 NMAC - Rp, 8 NMAC 14.3.3, 12/30/2005]

8.14.3.4 D U R A T I O N : Permanent.

[8.14.3.4 NMAC - Rp, 8 NMAC 14.3.4, 12/30/2005]

8.14.3.5 EFFECTIVE DATE: December 30, 2005, unless a later date is cited at the end of a section.

[8.14.3.5 NMAC - Rp, 8 NMAC 14.3.5, 12/30/2005]

8.14.3.6 OBJECTIVE: Clients placed in the department's custody receive appropriate and individualized educational programs and services. The programs are designed to meet treatment, education and rehabilitative needs.

[8.14.3.6 NMAC - Rp, 8 NMAC 14.3.6, 12/30/2005]

8.14.3.7 DEFINITIONS:

A. Educational program refers to a program of formal academic education or vocational training.

B. IDEA refers to Individuals with Disabilities Education Act. [8.14.3.7 NMAC - Rp, 8 NMAC 14.3.7, 12/30/2005]

**8.14.3.8 E D U C A T I O N ,
VOCATIONAL AND WORK PRO-
GRAMS:**

A. Clients are provided academic and vocational counseling, initial screening, assessment and evaluation to determine individual needs. The programs are consistent with the needs of the client population and the requirements of state and federal statutes.

B. Educational programs are accredited with the state of New Mexico public education department and comply with federal and state mandates governing regular and special education (IDEA) requirements. The state of New Mexico licenses juvenile justice service educational instructors.

C. Coordination and continuity between educational, vocational and work programs are provided in the plan of care and transitional plan. Work programs do not interfere with educational and treatment programs. Educational services are not used as a reward or punishment for client behavior.

D. Clients have access to a comprehensive collection of general and specialized reference materials that meet educational, recreational and legal needs. Client special requests for reference materials, subject to limitations necessary to maintain facility order and security, are accommodated.

E. Credits, diplomas, letters of attendance, graduation exercises and other incentives are formally provided to recognize clients for educational and vocational achievements and are equivalent to those issued by the public education department.

F. Clients employed in the

community are compensated at prevailing rates.

G. Juvenile justice service clients must adhere to and follow all federal and state laws as they relate to the terms, conditions and limitations on working hours and conditions of clients performing work in a JJS facility.

H. Educational records are confidential according to law.

I. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipts and understanding and that these signed forms are part of the of the employee's personnel file. [8.14.3.8 NMAC - Rp, 8 NMAC 14.3.11, 12/30/2005]

HISTORY OF 8.14.3 NMAC:

Pre-NMAC History: The material in this part replaces the material that was previously filed with the State Records Center and Archives under:

DDC/GS 10-60, Special Leave of Absences for Juveniles, filed 5/23/90.

YDDC/GS 15-01, Equal Opportunities for Juveniles Programs, filed 5/23/90.

YDDC/GS 06-20, Participation in Religious Programming, filed 5/23/90.

YDDC/GS 06-21, Provision of Staff and Resources for Religious Program, filed 5/23/90.

YDDC/GS 08-02, Classification for Reintegration Center Transfers, filed 5/23/90.

YDDC/GS 08-10, Classification of Juveniles with Special Needs, filed 5/23/90.

YDDC/GS 08-11, Juvenile Releases, filed 5/23/90.

BS 67-19, Boys Personal Property, filed 5/23/67.

BS 67-23, Students Supervision, filed 5/23/67.

BS 67-45, Students Personal Property, filed 5/23/67.

BS 67-49, Organization and Management Policy Cigarette and Candy Issue, filed 5/23/67.

BS 67-53, Students Notification of Parents Change of Status, filed 8/16/67.

BS 67-54, Students On-Campus Group Work, filed 9/5/67.

History of Repealed Material:

8 NMAC 14.49, Pre-Parole Release Passes and Furloughs, filed 11/15/96 - repealed effective 11/15/98.

8 NMAC 14.3, Facility Programs, filed 11/2/98 - repealed effective 12/30/2005.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 5 FACILITY OPERA- TIONS

8.14.5.1 ISSUING AGENCY: New Mexico Children, Youth and Families Department.

[8.14.5.1 NMAC - Rp, 8 NMAC 14.5.1, 12/30/2005]

8.14.5.2 SCOPE: This rule applies to clients who are committed to the custody of juvenile services pursuant to the Delinquency Act, and staff of juvenile justice services of the children, youth and families department.

[8.14.5.2 NMAC - Rp, 8 NMAC 14.5.2, 12/30/2005]

8.14.5.3 STATUTORY AUTHORITY: NMSA 1978 SECTION 9A-2-7(D) authorizes the secretary of the children, youth and families department to adopt regulations as necessary to carry out the duties of the department. NMSA 1978 section 32A-2-19(B) provides that delinquent children may be committed to the legal custody of the department for placement, supervision and rehabilitation, and more generally NMSA 1978 section 32A-2-1 et seq., the Delinquency Act, contains various provisions relating to the commitment and custody of delinquent children.

[8.14.5.3 NMAC - Rp, 8 NMAC 14.5.3, 12/30/2005]

8.14.5.4 DURATION: Permanent.

[8.14.5.4 NMAC - Rp, 8 NMAC 14.5.4, 12/30/2005]

8.14.5.5 EFFECTIVE DATE: December 30, 2005 unless a later date is cited at the end of a section.

[8.14.5.5 NMAC - Rp, 8 NMAC 14.5.5, 12/30/2005]

8.14.5.6 OBJECTIVE: To provide for the operations of juvenile justice service facilities, including safety, sanitation and hygiene, communication, client rule violations and grievances.

[8.14.5.6 NMAC - Rp, 8 NMAC 14.5.6, 12/30/2005]

8.14.5.7 DEFINITIONS:

A. 15-day diagnostic evaluation refers to the court-ordered evaluation of a child for purposes of diagnosing the child and preparing a report

to the court indicating what disposition appears most suitable when the interests of the child and the public are considered (see Section 32A-2-17(D), NMSA 1978). 15-day diagnostic evaluations are conducted in the community or YDDC.

B. 15-day diagnostic report refers to the written report prepared for the court incorporating the findings of the 15-day diagnostic evaluation.

C. Administrative discharge refers to the discharge certificate issued by the juvenile parole board on the client's custody expiration date.

D. Administrative log refers to a record describing routine and emergency information forwarded to the facility superintendent.

E. Aftercare refers to supervision and care provided to clients released from juvenile justice facilities and treatment programs.

F. Aftercare plan refers to the parole agreement and plan of care.

G. CYFD refers to the New Mexico children, youth and families department

H. Case manager refers to a CYFD employee whose job duties include participating in the casework or facility classification process for JJS clients.

I. Caustic material refers to a substance capable of destroying or eating away by chemical reaction.

J. Central intake refers to the entry point at YDDC, for clients who have at least a one-year commitment.

K. Classification refers to an assessment of the client's risk, needs and strengths by which juvenile probation and parole officers determine the level of care and management of clients; the system and procedure through which new clients are assessed and assigned to the appropriate facility and living unit.

L. Classification officer refers to facility case managers and staff specifically assigned to the classification process of clients.

M. Client refers to a person who is committed to the custody of CYFD's juvenile justice services or who is receiving services from CYFD's juvenile justice services.

N. Combustible liquid refers to a substance with a flash point at or above 100 degrees fahrenheit and classified by flash point as a class II or class III liquid.

O. Contraband refers to any item disallowed by the contraband facility list or law in the possessions or control of a client, visitor, staff member, contractor or other person on the grounds of a CYFD facility.

P. Control center refers to a secure self-contained unit designed to coordinate communications and maintain

the security of the facility; staffing and accessibility of the control center ensure that it cannot be commandeered by unauthorized persons.

Q. Control center log refers to a log in which control center staff note incoming phone calls and radio transmissions.

R. Emergency refers to any significant disruption of normal facility operations that may be precipitated by events such as riot, escape of a client, fire, or natural disaster.

S. Emergency plan refers to a plan of action to be taken in the event of a specific emergency situation.

T. Emergency situations refers to situations which cause any significant disruption of normal facility or agency procedures, policy, or activity caused by riot, escape, fire, natural disaster, employee or client action, or other serious incident.

U. Endorsed court order refers to an order of the court, bearing the judge's signature, and stamped and filed by the clerk of the court.

V. Escape refers to an unauthorized client departure from CYFD juvenile justice services facility.

W. FACTS refers to the CYFD computer database in which client information is maintained.

X. Facility refers to a facility operated by, or on behalf of, CYFD's juvenile justice services, for purposes of housing and providing care for clients committed to the custody of CYFD. The facilities include: John Paul Taylor center, New Mexico boys' school, New Mexico girls' school, youth diagnostic and development center, camp Sierra Blanca and the reintegration center.

Y. Facility administrator refers to staff charged with managing specific tasks relating to security and programs within a facility.

Z. Fire safety officer or FSO refers to the staff person designated at each facility to be responsible for facility compliance with all applicable fire safety codes and regulations. The fire safety officer is certified through the national fire training academy.

AA. Flammable liquid refers to a substance with a flash point below 100 degrees fahrenheit (37.8 degrees centigrade) and classified by flash point as a class I liquid.

AB. Flash point refers to the minimum temperature at which a liquid will give off sufficient vapors to form an ignitable mixture with the air near the surface of the liquid.

AC. Food service monitor refers to a facility staff member assigned by the facility superintendent or designee to

monitor a food service contractor or a food service supervisor.

AD. Food service supervisor refers to an individual trained in food service management, with the resources, authority and responsibility to provide facility clients with complete food service.

AE. Formal count refers to a count in which a client's presence is verified in person by the individual responsible for each specific area where clients are present.

AF. Informal count refers to the client counts conducted by staff in each facility area in which an assigned staff is responsible for client supervision. Informal counts are conducted in each area at least once during each work period.

AG. Juvenile justice services or JJS refers to the organizational unit within CYFD that operates juvenile justice facilities and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

AH. Juvenile parole board refers to the releasing authority of clients committed to the custody of the department.

AI. Living unit refers to an area in a CYFD facility where clients are assigned to perform their daily activities and to sleep.

AJ. Long-term evacuation refers to evacuation of clients from a facility for longer than 6 hours (requiring overnight accommodation) including the transportation of clients and staff away from the state-owned or state-leased property.

AK. Major infraction refers to a violation of CYFD rules of conduct for clients which results in harm or threatened harm to a client or another person, property damage, or creates an unsafe condition. A major infraction under this definition may include a criminal law violation or delinquency act.

AL. Master file refers to official files maintained for each client who is or was referred to JJS.

AM. Minor infraction refers to a violation of the CYFD rules of conduct for clients which does not threaten or result in harm to a client or another person, or results in property damage or which does not create an unsafe condition in the facility.

AN. MSDS refers to material safety data sheets.

AO. NMBS refers to New Mexico boys' school.

AP. NMGS refers to New Mexico girls' school.

AQ. Night security log refers to an administrative log that includes documentation of visual inspection of clients.

AR. Non-privileged com-

munication refers to any and all mail that is not privileged mail under the definition of privileged mail.

AS. Obscene refers to content or material the dominant theme of which, taken as a whole, appeals to the prurient interest or is patently offensive because it affronts contemporary community standards relating to the description or representation of sado-masochistic abuse or sexual conduct; and lacks serious literary, artistic, political or scientific value. The use of "swear words," foul language, etc., standing alone, does not constitute obscenity.

AT. Obstructed fire drill refers to a drill in which an identified emergency egress path is blocked.

AU. Parole refers to the status of a client who has been released from a juvenile justice facility before the end of the client's commitment period. This time of release may be also referred to as aftercare.

AV. Pat down search refers to a visual and manual search of a clothed client and the client's clothing for contraband without the removal of the client's clothing. The client and staff must be the same gender.

AW. Permanent log refers to a system of bound records that contains information regarding clients, day-to-day operations, emergencies and incidents at facilities.

AX. Pest refers to any destructive insect, animal or vermin that cause annoyance, discomfort or disease.

AY. Plan of care refers to a plan for treatment or supervision of clients in the custody of, or under the supervision of CYFD.

AZ. Post order refers to a description of duties that require specific functions for work assignment in the facility.

BA. Privileged communication refers to communication, verbal or written, including mail, between (to or from): a client and attorney; client and child advocacy groups; client and judicial officer (federal, state, or tribal), client and a state, federal, or tribal public officials; and client and foreign consulates.

BB. Prohibited material refers to any objects or items given by visitors or staff to a client, which is considered contraband in a JJS facility.

BC. Reasonable cause refers to knowledge by the superintendent or any member of the facility staff of articulated facts, together with rational inference based on those facts, that would lead a reasonable person to believe that a client has committed an act or is planning an act that is prohibited by law or by CYFD facility procedures, or that an envelope or package

contains contraband or prohibited material as defined by these procedures.

BD. Reintegration center refers to a department community residential center, including Albuquerque boys' reintegration center and Eagle Nest reintegration center.

BE. Registered dietitian (R.D.) refers to a dietician with a baccalaureate or post-baccalaureate degree from an accredited college or university and documented satisfactory completion of an internship or a professional experience program and certification of registration by the commission on dietetic registration of the American dietetic association as a registered dietician.

BF. Religious diet refers to meals, dietary restrictions or special handling of food required by a bona fide religious group.

BG. Roll call refers to an accounting of clients by reading off each client's name and verifying the physical presence of each client.

BH. SDM refers to CYFD's structured decision-making tools to determine a client's likelihood of re-offending.

BI. Safety trained staff refers to designated staff members who are trained by the fire safety officer and who are responsible for routine weekly inspections.

BJ. Sample tray refers to a tray that has a portion of each menu item served for each meal and stored in the freezer for a period of seventy-two (72) hours after each meal.

BK. Secretary refers to the secretary of CYFD.

BL. Secure facility refers to refers to J. Paul Taylor center, New Mexico boys' school, New Mexico girls' school and youth diagnostic and development center.

BM. Secured count refers to the completion of a formal count when all clients have been accounted for.

BN. Sending facility refers to the facility from which a client is transferred.

BO. Separation refers to the separation of a client from general population and removal from regularly scheduled activities and can be imposed for disciplinary, medical, mental health/behavioral health reasons for time, protection and safety of a client.

BP. Short-term evacuation refers to evacuation of clients from a facility for less than six (6) hours, including transportation of clients away from state-owned or state-leased property.

BQ. Special diet refers to special foods or meals prescribed by the medical authority or dentist as part of the client's medical treatment.

BR. Spiritual advisor refers to a spiritual leader, preferably certi-

fied, who can provide, on a volunteer bases, spiritual and cultural healing by the use of herbs and chants of prayer and song.

BS. Staff refers to employee(s) of CYFD.

BT. Strip search refers to a visual search of a client for contraband, requiring the client to remove all clothing. Client and staff must be same gender.

BU. Superintendent refers to the chief facility administrator at the John Paul Taylor center, New Mexico boys' school, New Mexico girls' school, youth diagnostic and development center, and reintegration centers.

BV. Sweat lodge refers to a round willow hut with a pit in the center of the hut. The hut is constructed of willow branches, blankets and canvas.

BW. Tools refer to any item that, if not accounted for, could cause death, serious injury or aid an escape from a facility.

BX. Toxic refers to a substance that through chemical reaction or mixture, can produce possible injury or harm to the body by entry through the skin, digestive tract, or respiratory tract. The toxicity is dependent on the quantity absorbed and the rate, method, and site of absorption.

BY. Unit shift description refers to the written document that describes the daily operations, staff duties, and client activities for each shift specific to each living unit.

BZ. Unobstructed fire drill refers to a drill in which identified emergency egress paths are not blocked with an obstruction.

CA. Visitor refers to members of the immediate family (mother, father, step-parents, foster parents, brothers, sisters, spouse, children) and other relatives (grandparents, in-laws).

CB. YDDC refers to the youth diagnostic and development center. [8.14.5.7 NMAC - Rp, 8 NMAC 14.5.7, 12/30/2005]

8.14.5.8 FACILITY INTAKE:

A. Pre-intake

(1) An adjudicated delinquent client may be committed to the custody of the department. The department determines the appropriate placement, supervision and rehabilitation program for the child.

(2) When a client is committed to a juvenile justice services facility for a term commitment or a diagnostic evaluation, probation and parole copies and sends only those documents unavailable in FACTS to the "records manager" in a sealed envelope. As documents become available in FACTS, the documents are not copied.

(3) The identified documents for the facility casework sub-file are transported with the client to YDDC and is addressed

to the "records manager." The facility records manager or designee is the only person authorized to open the contents of the envelope.

(4) When the newly created confidential facility casework sub-file is not sent with the client, the JJS field staff mail the required documents, addressed to the "records manager" within two (2) business days, with a certified receipt to assure delivery to YDDC. This policy is utilized when hand delivery of documents is impossible.

B. Client intake

(1) The New Mexico youth diagnostic and development center (YDDC) is the receiving facility for those clients for whom the court orders either a diagnostic evaluation or commits a client to CYFD custody for a period of one year or longer and for parole revocation clients.

(2) An admission process exists for newly committed clients that include: minimum program expectations, discharge criteria, optimal projected release date, a central intake team decision making (TDM) report, reception and orientation program and written orientation material or their translations. Staff helps the client to understand the material and documents the material presented in FACTS. Designated staff reviews the client's information received and requests additional information when necessary.

C. YDDC intake - control center staff: at a minimum, control staff

(1) pat down search;

(2) places the client in a holding cell;

(3) reviews the endorsed court order to verify the transfer of legal custody and commitment of the client to the department, determines the client's legal name is on the court order and identifies the type and length of commitment;

(4) provides a written receipt to law enforcement personnel transporting the client to verify delivery of the client to YDDC and the legal custody of the department;

(5) begins the intake screening process with the client to ensure, to the fullest extent possible, that the client does not have any emergency medical, behavioral health or substance abuse conditions which would render admission unsafe;

(6) verifies information in FACTS and updates if necessary;

(7) photographs the front view of clients thirteen (13) years of age or older or, upon order of the court, photographs clients under the age of 13, Section 32A-2-14(J), NMSA 1978;

(8) assigns the client to a living unit;

(9) mails an orientation packet to parent or guardian (excluding those client's

who are at YDDC for court ordered 15 day diagnostic evaluations);

(10) secures the client's personal belongings, including money, in the client's presence and provides a written receipt;

(11) notifies behavioral health, medical and education services, records and classification, if applicable, of the client's arrival; and

(12) arranges for a urine sample for substance abuse analysis from the client.

D. Living unit assignment and activities

(1) At the conclusion of the YDDC facility intake process, YDDC control center staff assigns the client to a living unit and notifies the living unit. The client's assignment is noted in the living unit's permanent log and in FACTS.

(2) Male and female clients are not assigned to the same living unit and do not share sleeping rooms.

(3) Whenever possible, clients under the age of majority (18) will not share rooms with clients over the age of majority.

(4) Whenever possible, individual rooms are made available, when indicated, for the following:

(a) clients who have special needs for single housing;

(b) clients with severe medical disabilities;

(c) clients suffering from serious mental illness;

(d) clients who are sexual predators; and

(e) clients who are likely to be exploited or victimized by others.

(5) Living unit staff issue clothing and sanitary supplies to the client. Only department issued clothing is allowed for clients in a secure facility.

(6) Living unit staff inventories the client's personal property and clothing in the client's presence for the return of clothing and property not allowed at the facility to the client's parent or guardian.

(a) Staff completes and signs the property record, obtains the client's signature in agreement with the inventory and places the client property for return to the client's parent or guardian in a box for mailing. Staff gives the client a copy of the signed property inventory and places a copy in the client's casework file.

(b) Staff mail the client's property to the parent or guardian within seventy-two (72) hours of the client's admission.

(7) Living unit staff conducts a strip search of clients as part of the intake process. Two (2) staff of the same gender as the client conducts strip searches. Staff records client tattoos, scars and other identifying marks on the client's body.

(8) JJS requires clients to shower. **Clients are deloused upon medical orders**

only. Staff of the same gender as the client, supervises clients during the shower.

(9) No later than 24 hours and preferably immediately upon completion of the client's intake, designated JJS facility staff meets with the client to begin the orientation process by discussing program goals, services and expectations. Documentation of each component of the orientation is maintained in the client's master file and includes the orientation topics, dates of presentation, and signatures of client and staff involved in the orientation. Living unit staff provides orientation to the client, including:

(a) client rules and regulations, including possible sanctions for non-compliance;

(b) client rights and responsibilities;

(c) coed-code of conduct (if applicable);

(d) grievance procedures;

(e) visitation, mail and telephone procedures;

(f) search and seizure policies, procedures and contraband lists;

(g) living unit guidelines;

(h) overview of programs and services; and

(i) safety and emergency procedures.

(10) Non-English speaking clients receive written materials or translations in their language. Where literacy problems exist, staff assists clients in understanding materials.

(11) Living unit staff and client sign and date orientation forms acknowledging they read and understood items in Paragraph (9) of Subsection D of 8.14.5.8 NMAC. Signed acknowledgement forms are placed in the client's casework file.

(12) As part of the client's first day of orientation, staff allows the client to place a fifteen (15) minute telephone call to his parent or guardian. Staff documents the telephone call in the daily log.

E. Intake for transfers

(1) Control center staff:

(a) places client in holding cell;

(b) provides a written receipt to the JJS transport team to verify the delivery of the client and sealed master files;

(c) begins the transfer intake screening process with the client to ensure, to the fullest extent possible, that the client does not have any emergency medical, behavioral health or substance abuse conditions which would render admission unsafe;

(d) verifies information in FACTS and updates if necessary;

(e) photographs the front view of clients thirteen (13) years of age or older, or upon order of the court, photographs clients under the age of 13, Section 32A-2-14(J),

NMSA 1978;

(f) assigns the client to a living unit;

(g) notifies behavioral health, medical and education services, records and classification, if applicable, of the client's arrival; and

(h) arranges for a urine sample for substance abuse analysis from the client.

(2) Living unit assignment and activities:

(a) the client's assignment is noted in the living unit's permanent log and in FACTS;

(b) whenever possible, clients under the age of majority will not share rooms with clients over the age of majority;

(c) whenever possible, individual rooms are made available, when indicated, for the following:

(i) clients who have special needs for single housing;

(ii) clients with severe medical disabilities;

(iii) clients suffering from serious mental illness;

(iv) clients who are sexual predators; and

(v) clients who are likely to be exploited or victimized by others;

(d) living unit staff issue clothing and sanitary supplies to the client; only department issued clothing is allowed for clients in a secure facility;

(e) living unit staff conducts a strip search of clients as part of the intake process; two (2) staff of the same gender as the client conducts strip searches; staff records client tattoos, scars and other identifying marks on the client's body.

(f) JJS requires clients to shower; staff of the same gender as the client, supervises clients during the shower.

F. Temporary admissions: JJS allows for temporary facility admissions for clients in the legal custody of the department. Clients may be housed in a temporary secure facility, with the superintendent's approval, pending transportation to another facility when the destination cannot be reached in a single day. A client may be housed in a secure facility up to 48 hours pending transportation to designated facility. The deputy director for facilities makes exceptions to the length of stay in writing.

G. Verification of case record

(1) The facility records manager verifies the client's casework file within one (1) week of the client's arrival. Facility staff requests required information from the field office when documents are insufficient or lacking. The field office provides the information as soon as practicable, and no later than twenty-four (24) hours after the

request.

(2) Copies of the verified department approved case record sheet are placed in or forwarded to:

- (a) the client's casework file;
- (b) behavioral health staff;
- (c) education staff;
- (d) medical staff;
- (e) control center; and
- (f) juvenile parole board.

[8.14.5.8 NMAC - Rp, 8 NMAC 14.3.8, 12/30/2005]

8.14.5.9 CLASSIFICATION AND ASSESSMENT:

A. Central intake

(1) As part of the client intake process at YDDC, JJS must classify and assign the newly committed client. Within three weeks of the client's admission, central intake conducts a team decision making (TDM) meeting to determine the client's classification and placement.

(a) Prior to the TDM meeting, central intake staff notify the parents or guardians in writing of the date, time and location of the meeting. The TDM meetings are scheduled at those times that maximize family involvement. If the parent or guardian is unable to attend the meeting in person, the parent or guardian is encouraged to go to the local juvenile probation and parole office to participate telephonically. Juvenile probation and parole officers are required to participate in TDM meetings.

(b) Central intake staff electronically notifies, through FACTS, JJS staff from program disciplines responsible for conducting assessments as well as other pertinent department staff, including the juvenile parole board (JPB).

(c) All assessments must be completed prior to TDM meeting.

(2) When classifying and considering placement, central intake staff consider the client's sex, age, medical, education, or mental health problems, history of violence, sexual aggression, risk of re-offending and escape. At a minimum, central intake staff utilize a current (within one month of client's commitment) pre-disposition report (PDR) or client/family baseline assessment (CFBA) and current (within one month of client's commitment) structured decision making assessments.

(3) When mental health, substance abuse, escape factors or special needs related to the client are identified during the TDM meeting, central intake staff documents the information in FACTS and includes the information in the resulting TDM report.

(4) The TDM meeting develops an initial plan of care (POC) and community re-entry plan based on the client's prioritized needs identified from the various assessments. The goals are measurable,

timelined and identify the responsibilities of the client, parent or guardian and JJS staff. The client and family are advised that the POC may be revised when it is in the best interests of the client's rehabilitation and public safety.

(5) Within two business days of the completion of the TDM meeting, central intake staff completes a report and submits the report for approval to the central intake bureau chief. Upon approval of the report, a copy of the report is placed in the client's FACTS record while the approved report is sent to the facility records manager to be placed in the client's casework file.

(6) Within five (5) calendar days of the completion and approval of the central intake TDM report, the client, along with the master file, is transferred to the initial placement identified in the report. All files, created during the central intake process, excluding the master file, are destroyed.

B. Initial placement

(1) The superintendent of a facility receiving an assigned client designates staff to review the client's master file and FACTS to ensure all documentation is current.

(2) Treatment teams are established within each facility for purposes of case management and rehabilitative treatment. The superintendent assigns a treatment team to all clients. The treatment team is responsible for:

- (a) accurately completing each client's structured decision making risk and needs reassessments;
- (b) identifying and implementing POC steps;
- (c) ensuring service delivery;
- (d) reassessing the client's progress towards the plan of care; and
- (e) assessing and documenting the client's progress.

(3) The treatment team is composed of representatives from the facility's administrative, educational, residential, medical, behavioral health, and classification units along with the JPPO, client and parent or guardian. The facility classification officer is the client's case manager and the treatment team leader.

(4) At a minimum, the case manager is responsible for ensuring the client's SDM reassessments, POC, and progress reports are completed, approved and submitted within the timelines the department sets.

(a) Progress reports are provided to the client and his parent or guardian and the juvenile parole board (JPB).

(b) As documents become available in FACTS, those documents are used. Copies of non-FACTS generated documents are sent to the juvenile parole board.

(5) The treatment team conducts a

treatment team review (TTR) at least monthly to informally review the client's progress.

(6) Quarterly, the treatment team meets to determine client readiness for parole or transition to another JJS facility. Transfers of clients from a less to a more restrictive program or facility or removal from a program are permitted. Clients may appeal the transfer decision.

(a) The client's case manager is responsible for accurately completing and submitting required documents to the classification supervisor. Upon classification supervisor's written approval, the case manager forwards all non-FACTS generated documents to central intake for review and approval of the transfer.

(b) The central intake bureau chief reviews and provides written approval in FACTS for client transfers. When the transfer is not approved, the central intake bureau chief provides, in writing, reasons for denying the request.

(c) If the transfer decision is denied from central intake, the client may appeal the decision.

(7) Clients committed to the custody of the department after June 16, 2005 for either a short-term (one year commitment) or long term commitment (2 year commitment) shall be paroled at least 90 days prior to the expiration of the commitment unless is parole is revoked or the commitment is extended pursuant to Section 32A-2-23 NMSA 1978. Prior to the expiration of short term or long term commitment the department may petition the court for an extension to safeguard the welfare of the child or the public safety. A juvenile justice client receiving a short-term commitment may have the commitment extended for one six month period, while a client receiving a long -term commitment may have his commitment extended for additional periods of one year until the child reaches the age of twenty-one. If the court extends commitments, the mandatory ninety-day parole is included in the extension.

(8) Clients committed to the custody of the department prior to June 17, 2005 for a short-term (one year commitment) receive 90 days mandatory parole regardless of discharge date.

(9) For those clients committed to the custody of the department prior to June 17, 2005 for a long-term (two year commitment) or are committed until the age of 21, the client's treatment team recommends a client for parole.

(a) Prior to the expiration of a long-term commitment the department may petition the court for an extension to safeguard the welfare of the child or public safety. A client may have his commitment extended for additional periods of one year until the client reaches the age of twenty-

one.

(b) If a client is not recommended for parole, or the juvenile parole board denies the client parole, the client is released from the facility on his commitment end date.

[8.14.5.9 NMAC - Rp, 8 NMAC 14.3.8 & 9, 12/30/2005]

8.14.5.10 RELEASE FROM JUVENILE JUSTICE CUSTODY:

A. An aftercare plan is formulated concurrently with the plan of care and is documented and updated throughout the client's stay by the client's team decision making (TDM) meeting participants or treatment team review (TTR) meeting participants and in FACTS.

B. Staff assigned to a client communicates with the juvenile parole board regarding client progress and possible scheduling for consideration for parole and share documentation of client status with the juvenile parole board.

C. The TDM participants make recommendations to the facility superintendent regarding changes for the juvenile parole board hearing date for a client or removal of a client from the board's agenda. The superintendent provides written notification to the juvenile parole board if a client is removed from the agenda or otherwise rescheduled.

D. At the expiration of a client's legal commitment for those clients committed to a JJS facility prior to June 17, 2005 and when the client is not paroled, the facility case manager coordinates with the juvenile parole board to arrange an administrative discharge.

[8.14.5.10 NMAC - Rp, 8 NMAC 14.3.14, 12/30/2005]

8.14.5.11 BEHAVIOR MANAGEMENT AND CRISIS INTERVENTION:

A. Use of force is restricted to justifiable self defense, protection of others, protection of property, and prevention of escapes. The amount of force is limited to that minimally necessary to control the situation.

B. Force is not used as punishment.

C. Juvenile justice services protects and promotes the rights of each client, including the right to be free from physical or mental abuse, corporal punishment and any physical restraints or seclusion imposed for the purposes of discipline or convenience. Juvenile justice services prohibits in policy, procedure and practice:

(1) Corporal punishment is not permitted for any client in juvenile justice services custody.

(2) Staff are prohibited from

using techniques of physical restraints that unduly risk serious harm or needless pain to the client. These techniques include:

(a) restricting respiration in any way, such as applying a chokehold or pressure to a client's back or chest or placing the client in a position that is capable of causing asphyxia;

(b) using any method that is capable of causing loss of consciousness or harm to the neck;

(c) pinning down with knees to torso, head and/or neck;

(d) slapping, punching, kicking or hitting;

(e) using pressure point, pain compliance and joint manipulation techniques, other than the department's approved method for release of a chokehold, bite or hair pull;

(f) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(g) dragging or lifting of the client by the hair or by any type of mechanical restraints;

(h) using other clients or untrained staff to assist with the restraint;

(i) securing a client to another client or to a fixed object;

(j) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the client's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional;

(3) degrading punishment or personal abuse;

(4) group punishment for one individual's behavior;

(5) punitive work assignments;

(6) isolation or seclusion, except as appropriate in special circumstances for client safety and only for a limited time as specified in procedures;

(7) chemical/aerosol restraints, except as used by certified law enforcement officers in the performance of their duties; and

(8) mechanical restraints, except as stated in behavior management and crisis intervention, 8.14.1.23 NMAC.

D. Staff are prohibited from using medical care, religious programming, education, recreation and client communication with parents, guardians or legal counsel as a reward or punishment for conduct.

E. Juvenile justice services establish and follow policies and procedures governing the use of behavior management practices including therapeutic holds, physical restraints and seclusion. This includes documentation of each thera-

peutic hold, physical restraint and seclusion in the client's casework file and FACTS.

F. For those behavior management practices that are allowed for above, juvenile justice services supports their limited and justified use through:

(1) staff orientation and education that create a culture emphasizing prevention of the need for therapeutics holds, physical restraint and seclusion and their appropriate use;

(2) assessment processes, including but not limited to videotaping the event, identifying and preventing potential behavioral risk factors; and

(3) the development and promotion of preventative strategies and use of less restrictive alternatives.

G. On an annual basis, juvenile justice services staff who have contact with clients and families must attend department approved conflict management, verbal de-escalation and personal safety courses.

H. Juvenile justice services facility staff use only agency approved and trained physical restraint techniques that include but are not limited to department approved methods of manual and mechanical restraints.

I. Juvenile justice services staff, field and facility, may not carry or store chemical agents or any physical restraint device or equipment.

J. Use of restraint equipment in juvenile justice services facilities that constitutes routine uses, i.e., transporting a client, is not considered as use of force unless authorized force was required to apply the restraints.

K. JJS staff are trained on the use of mechanical restraints prior to receiving authorization from the superintendent/designee to use the department restraints. Staff only use department issued items. Staff whose training is not current (more than one year) is not allowed to use mechanical restraints.

L. Staff completes a written report, using the designated department approved form, when force is used. The form is to be completed prior to the end of shift and submits the form prior to leaving the premises to the superintendent who reviews each form for completeness, accuracy, timeliness, compliance to JJS policies and procedures and signs the forms. The superintendent immediately forwards a copy of the form within to the designated deputy secretary and deputy director for facilities and director of communications.

M. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and under-

standing and that these signed forms are part of the of the employee's personnel file. [8.14.5.11 NMAC - N, 12/30/2005]

8.14.5.12 SEPARATION:

A. Staff removes clients from general population and regularly scheduled activities only for disciplinary, medical or behavioral health reasons. Separation (isolation) is used only as a last resort. Time out is imposed when a client needs a temporary cooling off period.

B. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file [8.14.5.12 NMAC - N, 12/30/2005]

8.14.5.13 RULES OF CONDUCT AND SANCTIONS:

A. JJS facilities provide a system of rewarding the positive behavior and program progress of individual clients in a JJS facility, including but not limited to:

- (1) attendance at special activities;
- (2) lower SDM scores;
- (3) placement in less secure environment;
- (4) participation in community activities;
- (5) modification to the plan of care;
- (6) extra privileges;
- (7) achievement certificates; and
- (8) written acknowledgement of positive behavior or progress.

B. The designated deputy secretary approves client rules of conduct for JJS facilities which reward positive behavior of clients, accommodate the programs, services and mission of the facility and recognize the limitations or special circumstances of a facility.

C. The designated deputy secretary provides written approval of major and minor rule violations for JJS facilities.

- (1) Major rule violations
 - (a) committing any criminal or delinquent act involving weapons or which results in physical harm to others;
 - (b) tampering with locks, security lock devices or emergency related equipment, computers, video or communications equipment;
 - (c) failing to follow published health, safety or sanitation regulations which results in injury to a client, including tattooing or body piercing;
 - (d) possessing or use of contraband;
 - (e) perpetrating a sexual act against or in the presence of any individual;

(f) causing someone else to come into contact with saliva, blood, semen, urine or feces;

(g) refusing to take a drug test;

(h) using perceived position or power to make someone give something to you or do something for you;

(i) participating in gang activities;

and,

(j) escaping or attempting to escape.

(2) Minor rule violations:

(a) breaching group confidentiality;

(b) disrupting an authorized activity by refusing to participate, engaging in rough behavior, being loud or disruptive, cursing or acting disrespectfully toward others;

(c) cheating on an assignment or test;

(d) missing scheduled activities or curfew time;

(e) lending, borrowing, possessing or trading clothing or property;

(f) failing to perform assigned tasks and/or cleaning up after self;

(g) talking in restricted areas;

(h) violating school rules in a JJS facility or public school;

(i) presenting false information to staff;

(j) entering a restricted area or client room without permission;

(k) violating food service guidelines;

(l) using profanity;

(m) violating dress code; and

(n) peer conflict.

D. Facilities conspicuous post client rules of conduct and behavior expectations in areas used by clients.

E. Superintendents shall not post, publish or use facility or reintegration center rules of conduct without written approval of the designated deputy secretary.

F. In accordance with approved and published rules, rewards and sanctions are determined individually based on client's risk, needs, and abilities.

G. Superintendents or designees shall not add items to the major or minor rule violations, rewards or sanctions. Requests to include additional items on the lists must be made in writing, annually, to the designated deputy secretary and include a justification for designating specific behaviors as a major or minor rule violation or modifying the existing rewards or sanctions. Any suggested major or minor rule violations, rewards or sanction revisions must provide reasons that are based on documented best practice or evidence. Any additions to the list are applicable to all juvenile justice services secure and reintegration center facilities.

H. The superintendent fol-

lows and applies this policy and applicable procedure in proposing any additional rewards, sanctions or rules of conduct, for submission to the designated deputy secretary.

I. The designated deputy secretary provides written approval of the facility rules of conduct. The superintendent publishes the facility rules of conduct and this section of the procedures to staff.

J. The superintendent or designee provides the designated deputy secretary-approved rules of conduct to clients and staff. At intake, clients provide a written acknowledgement of receipt of JJS rules, rewards and sanctions.

K. CYFD does not allow clients to be subjected to corporal or unusual punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping.

L. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file. [8.14.5.13 NMAC - Rp, 8 NMAC 14.7.8, 12/30/2005]

8.14.5.14 CORRECTIVE AND DISCIPLINARY ACTION OF CLIENTS:

A. Staff prepares a disciplinary report when there is reasonable belief that a client has committed a major infraction of facility rules. Alleged rule violations investigations are completed within twenty-four (24) hours of the report or discovery of the violation.

B. Clients are provided with a written copy of alleged rule violations within twenty-four (24) hours of the infraction or discovery of the infraction.

C. Facilities provide a forum to conduct a hearing concerning disciplinary rule violations at which clients may participate, ask questions, and present information.

D. The disciplinary hearing decision is based solely on the information presented in the hearing process. A written record is made of the hearing decision and the supporting reasons. A copy of the decision is given to the client.

E. If the client is found to have committed the rule violation, a copy is kept in the client's casework file. An appeal to the superintendent and the deputy director for facilities is provided.

F. If the client is found not to have committed the rule violation, the disciplinary reports are removed from the client's file but maintained in investigative files.

G. Clients are not discour-

aged from or subjected to retribution by staff for filing an appeal.

[8.14.5.14 NMAC - Rp, 8 NMAC 14.7.9, 12/30/2005]

8.14.5.15 CLIENTS PERFORMING WORK IN JJS FACILITIES: Juvenile justice service clients must adhere to and follow all federal and state laws as they relate to the terms, conditions and limitations on working hours and conditions of clients performing work in a JJS facility.

[8.14.5.15 NMAC - N, 12/30/2005]

8.14.5.16 CLIENTS PRIMARY LANGUAGE: If a client's primary language is a language other than English, the client may speak that language at any time that English is allowed except for classroom or group discussions, group activities, or when speaking with a staff member who does not understand the client's primary language.

[8.14.5.16 NMAC - N, 12/30/2005]

8.14.5.17 RELIGIOUS PROGRAMS:

A. A designated staff member coordinates religious programs and services. Religious or traditional spiritual activities, which reflect individual's traditions or beliefs, are provided for by the facilities. Space, equipment, staff and training are provided. Scheduling accommodates the activities as agreed upon between the provider and the facility.

B. Clients can participate voluntarily in practices of their religious or spiritual faith limited only by safety concerns. Clients are not punished, disciplined or discriminated against for participation or non-participation in religious or spiritual activities. Staff is prohibited from preaching to or proselytizing to clients or families about any religion or religious belief.

C. Parents/guardians/custodians of clients may be given the option to guide the religious education and practice of their minor children.

D. A native American child placed in a secure facility shall be permitted to participate in activities that strengthen cultural awareness. A representative of the child's culture shall be allowed access to the secure facility to provide activities that strengthen cultural awareness; provided that the activities are restricted to the premises of the secure facility.

E. Communication between a client and a department chaplain or spiritual advisor is confidential when the communication occurs in religious counseling, and the client intends that such communication be confidential and not disclosed by the chaplain, and is subject to the

limitations necessary to maintain facility order and security.

F. Juvenile justice services makes reasonable efforts to provide for a native American spiritual advisor who, on a volunteer basis, provides religious services and guidance to native American clients who are committed to a JJS facility.

G. Spiritual advisors and assistants are subject to background checks and an orientation, if their presence at a facility is for programmatic reasons and on a regular basis. If they are visiting the facility on behalf of a client they shall be subject to visitors' regulations. Native American tribal healers and spiritual advisors have access to facilities and clients as visitors.

H. Native American clients, committed to the custody of the department, regardless of classification are allowed to participate in sweat lodge ceremonies. Allowances in their schedules are made.

(1) The sweat lodge and other traditional spiritual counseling or activity is made a part of the client's treatment plan and the activity documented in the client's records.

(2) Each JJS facility provides to the native American program coordinator the required information, including CYFD outcome data, on native American clients wishing to participate in the program.

(3) If the native American client participates in traditional spiritual activities while in the facility, a discharge or community reentry plan includes like activities. [8.14.5.17 NMAC - Rp, 8 NMAC 14.3.10, 12/30/2005]

8.14.5.18 COMMUNICATION:

A. General provisions.

(1) The superintendent provides written rules governing client access to privileged and non-privileged publication, mail, visits and telephone calls to clients, families and to staff. In addition, the superintendent prominently posts the policies and procedures governing privileged and non-privileged communication, including mail, publications, phone calls and visitation.

(2) JJS does not provide a limitation on the volume of mail that a client may send or receive.

(3) Clients have the right to communicate or correspond with persons or organizations subject only to these policies and procedures, which are designed to balance the client's limited privilege to correspond with others against the need of the facility staff to maintain the security of the facility and the health and safety of clients and staff.

(a) Clients may communicate with parents, grandparents, siblings, children, spouses and others approved by the

superintendent. JJS does not prevent clients from communicating with relatives, previously listed, if the relative is incarcerated.

(b) Clients are not allowed to communicate with individuals who are incarcerated, on probation or on parole, other than specified above, unless approval is granted by the superintendent. The client's treatment team reviews requests to communicate with incarcerated individuals, and makes recommendations for approval or disapproval to the superintendent.

(4) Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.

B. Mail

(1) Mail is never censored; it is either delivered or it is rejected, and if rejected, it is either seized or returned to the sender as described in procedures. Under no circumstances is a superintendent or JJS staff permitted to blackout or otherwise alter or remove any part of a written communication to or from a facility client.

(2) JJS facility staff inform clients of the circumstances under which staff may open, inspect, read or reject mail, or the contents of envelopes or packages sent or received as mail, as provided in these policies.

(3) Mail that is addressed to the facility without properly identifying the client recipient can be opened by designated staff to identify and send the mail to the intended recipient.

(4) When clients are released from or transferred from a facility, their first class mail is forwarded within twenty-four (24) hours of receipt.

(5) Clients may access publications, at their own cost, as long as the publication does not:

(a) contain obscene material;

(b) depict or describe procedures for construction of or use of ammunition, bombs, incendiary devices, or weapons;

(c) depict, encourage or describe escape plans or contain blueprints, maps, drawings of similar facilities;

(d) depict or describe procedures for producing alcoholic beverages or manufacturing drugs; or

(e) advocate or espouse materials that promote racial or ethnic hatred, prejudice, gang activities or violence as determined by the superintendent of education.

C. Phone calls

(1) Clients have access telephone systems and/or public telephones and those clients with hearing or speech disabilities and juveniles who want to communicate with parents or guardians who have such

disabilities are afforded access to a telecommunications device for the deaf (TDD) or comparable equipment. Contractual telephone services are not authorized in JJS facilities.

(2) Staff documents all phone calls, received or made, in the client's master file and FACTS.

(3) JJS allows clients to contact parent or guardian by phone within twenty-four (24) hours of arrival at the facility.

(4) JJS clients are encouraged to, and are given the opportunity to, call their parent/guardian at least one time per week; calls last no more than fifteen (15) minutes and may be monitored by staff. The department pays for these calls.

(5) JJS allows for clients to contact attorneys, advocacy groups, and judicial or public officials. Such calls are privileged and shall not be monitored. Permission to make such calls is documented in client's master file and FACTS. Staff verifies that the client is calling the designated individual, but does not otherwise listen to the conversation.

(6) The superintendent or designee permits clients to make additional phone calls based on the client's individual program needs or progress.

(7) JJS staff place or receive emergency phone calls for clients at any time.

D. Visiting

(1) The superintendent determines visiting days, hours and duration. The frequency and length of regularly scheduled visits are the same for all JJS facilities.

(2) JJS staff provides written information regarding department approved visitation rules and regulations to clients and parents within twenty-four hours of the client's arrival to central intake. Juvenile probation and parole staff provide parents with the information at the time the client is committed.

(3) The superintendent or designees provide authorized visitors with visiting permits. Only three family members are allowed to visit at one time. Family members will need to coordinate the times of their visits. Prior to visitation, juvenile justice services require visitors to provide identification and to sign the designated visitor's log at the facility. Clients may hold hands with and hug visitors. Authorized visitors, include:

- (a) parents;
- (b) brothers and sisters;
- (c) spouse (marriage certificate must be provided);
- (d) children (birth certificate must be provided for each child);
- (e) grandparents;
- (f) attorney;
- (g) clergy;
- (h) JPPO;

(i) representatives of child advocacy groups; and

(j) judicial or public officials, including foreign consulates.

(4) The client's treatment team reviews special visit requests and makes recommendations for approval or disapproval to superintendent. The superintendent or designee, with a recommendation of the client's treatment team, authorizes special visits on a case-by-case basis. Special visitors must demonstrate the capability of enhancing the client's rehabilitation.

(5) Visitors violating juvenile justice services policies, procedures, rules and regulations pertaining to visitation may result in the visitor's loss of visiting privileges. This includes, but is not limited to:

- (a) visitors whom staff believe to be under the influence of drugs or alcohol;
- (b) visitors who are inappropriately dressed;
- (c) visitors who are disruptive in the visiting areas; and
- (d) visitors who introduce prohibited or contraband items.

(6) JJS facilities may subject visitors and their personal property to a search. The searches are conducted in a reasonable manner and the least intrusive method as possible. Before entering a juvenile justice services facility, visitors staff may be subject to a search that involves one or more of the following:

- (a) use of metal detectors (walk-through or wand);
- (b) use of trained canines;
- (c) visual inspection of property;
- (d) requiring pockets to be emptied; and
- (e) removal and inspection of shoes.

(7) Notice of the search is clearly posted at facility entrances.

(8) Canine searches are used in a manner that preserves personal dignity.

(9) Searches of visitors' belongings are conducted in their presence.

(10) Staff conducting the search may not touch the visitor.

(11) If a visitor refuses a search or does not pass the metal detector search, staff conducting a search will require a visual inspection search of visitor's property, including a pockets emptied and removal and inspection of shoes. Visitors may have future visiting privileges or entrance to the facility denied.

(12) If a visitor brings contraband or prohibited material onto the grounds of the facility, the visitor is denied access until the contraband or prohibited material is removed from the facility grounds.

E. Prohibited items and contraband: Juvenile justice services considers the following items prohibited for visitors and contraband for clients:

(1) weapons, essential components for making a weapon, any object modified for use as a weapon or items or material capable of use as or manufacture of a weapon including but not limited to:

- (a) guns;
- (b) ammunition;
- (c) hand made weapons (shanks);
- (d) nun chucks;
- (e) screw drivers and other maintenance tools;
- (f) chains;
- (g) clubs;
- (h) tasers or stun guns;
- (i) kubotan;
- (j) p-38 can openers;
- (k) pepper spray; and
- (l) knives or razor blades;

(2) pornographic materials in any form, including magazines, pictures or photographs of scantily clothed or naked people;

(3) tattoo machines and/or paraphernalia;

(4) gang paraphernalia;

(5) currency, except as allowed by the superintendent;

(6) alcoholic beverages or ingredients used to produce alcoholic beverages;

(7) controlled substances and imitation controlled substances, drugs of any type or drug paraphernalia;

(8) glues, aerosols, solvents, liquid paper, permanent markers, poisons or any other toxicants;

(9) prescription and over-the-counter medications, unauthorized medications;

(10) tobacco or tobacco products;

(11) lighters or matches;

(12) any objects modified for escape, maps or plans;

(13) unauthorized clothing;

(14) walkmans/discmans;

(15) any electronic device used for digital music;

(16) gameboys;

(17) x-box, game cube, play stations;

(18) cell phones or pagers (accept those authorized by the designated deputy secretary)

(19) cameras or video equipment;

(20) keys;

(21) ink pens;

(22) watches and other jewelry;

(23) mouthwash (any type);

(24) yeast;

(25) gum;

(26) social security cards or id cards of any type, including a driver's license;

(27) metal nail file or nail clippers;

(28) glass containers;

(29) personal tools; and

(30) stolen items.

F. All prohibited or contraband discovered during searches is confiscated, inventoried, and stored until it is no longer needed as evidence.

G. Superintendents or designees shall not add items to the prohibited or contraband lists. Requests to include additional items on the lists must be made in writing to the designated deputy secretary and include a justification for designating an item as contraband. Any suggested prohibited or contraband revisions must provide reasons that are based on documented best practice or evidence. Any additions to the list are applicable to all juvenile justice services secure facilities.

H. Visitors are allowed to bring clients food to consume during the visit, which is limited to:

- (1) two (2) unopened canned sodas or fruit juices;
- (2) two (2) unopened 3 oz. candy bars; and
- (3) two (2) small, unopened 3 oz. bag of chips, dried fruit or nuts.

I. Dress code for visitors:

(1) All visitors must be appropriately attired before entering a juvenile justice services facility. Visitors dressed inappropriately are denied visiting privileges.

(2) Children over the age of 10 are required to adhere to the adult dress code.

(3) **Acceptable attire** includes, but is not limited to:

- (a) medically required hats, caps and sunglasses;
- (b) sleeved polo or golf shirts with open collars;
- (c) straight-cut shirts are tucked;
- (d) skirts, dresses, or skorts no more than two-and one-half inches above the knee;
- (e) skirt or dress slits not exceeding mid-thigh in height;
- (f) undergarments must be worn and not visible through outer clothing;
- (g) footwear must be worn at all times;

(4) **Unacceptable attire** includes and is limited to:

- (a) slippers, beach type sandals or flip flops;
- (b) military boots;
- (c) clothing that is excessively worn, damaged or stained, including deliberate damage;
- (d) clothing that displays offensive or obscene material; material expressing or advocating a political opinion, cause, product, business or service; or sports team apparel, for example, football or basketball game jerseys;
- (e) shorts of any kind;
- (f) bermuda shorts;

- (g) sweatshirts;
- (h) sweatpants;
- (i) wind suits;
- (j) warm-up suits;
- (k) overalls or bibs;
- (l) any form-fitting, clinging pants of any type, including long pants, knee length and latex leggings, spandex, bicycle shorts;

(m) any form-fitting clinging tops, including camisoles;

(n) t-shirts to include print t-shirts, tank tops, muscle shirts, tube or halter tops or any shirt or blouse that reveals a bare midriff;

(o) dresses, blouses, or tops with spaghetti straps;

(p) strapless sun dresses;

(q) backless dresses or other low-cut dresses;

(r) bathing suits worn as an outer garment;

(s) visible undergarments;

(t) hats or caps unless medically required;

(u) sunglasses unless medically required; and

(v) visible tattoos and body piercings, excluding earrings.

(5) Superintendents or designees shall not add items to the appropriate or inappropriate visitor dress codes. Requests to include additional items on the lists must be made in writing to the designated deputy secretary and include a justification for designating an item as appropriate or inappropriate. Any additions to the list are applicable to all juvenile justice services secure facilities.

J. Clients are stripped searched before returning to their living unit. All prohibited or contraband discovered during searches is confiscated, inventoried, and stored until it is no longer needed as evidence.

[8.14.5.18 NMAC - Rp, 8 NMAC 14.8.8, 12/30/2005]

8.14.5.19 RECREATION AND ACTIVITIES:

A. Clients participate in two (2) hours of structured recreation daily, excluding the school recreation program. This includes large muscle exercise and other physically challenging activities, including out door activity, as weather permits. Monthly recreational activities are posted and followed, unless safety of clients is jeopardized.

B. Clients are involved in activities offered in the community, including community service programming.

C. In secure facilities, a full-time qualified recreational director plans and supervises all recreational programs.

D. Movies that are rated only G, PG or PG-13 are allowed to be shown in facilities.

E. Music which includes profanity, disrespect towards others or promotes violence, gang activity, or drug use is not allowed in JJS facilities.

[8.14.5.19 NMAC - Rp, 8 NMAC 14.3.12, 12/30/2005]

8.14.5.20 FACILITY STAFFING AND CLIENT SUPERVISION:

A. Staff to client ratios are assessed and maintained according to client location, needs and safety of clients and staff.

B. Staff are assigned to provide coverage in all populated areas of the facility at all times.

C. Staff read, sign and date changes to post orders or shift assignments before assuming responsibility for the shift.

D. Staff are located in or immediately next to client living areas and are available 24 hours a day. In secure facilities, staff make visual contact with living unit clients at least every 10 minutes, unless otherwise instructed to make visual contact more often. Staff document visual contact in the permanent and night security logs.

E. Male and female JJS facility housing units have at least one same gender staff member on duty at all times. Same gender staff are assigned for tasks requiring client privacy.

F. Clients are not left in control of other clients under any circumstances.

G. Superintendents, deputy superintendents and facility department administrators visit the facility and activity areas to encourage informal contact with clients and staff, and to observe living and working conditions on all shifts.

[8.14.5.20 NMAC - Rp, 8 NMAC 14.6.8, 12/30/2005]

8.14.5.21 CONTROL CENTER FUNCTIONS:

A. In those facilities that have a control center, the control center integrates external and internal security functions, communication networks, and is continually staffed. In facilities that have a control center:

(1) approved visitors provide identification at the control center before being allowed access to the facility;

(2) all incoming telephone calls are routed through the control center;

(3) staff transfer incoming calls to the appropriate staff or take messages; and

(4) staff report to the control center, using two-way communication radios of all client and staff movement.

B. The control center is equipped with two way communication radios. Staff reports all client and staff movement to the control center with two way hand held radios. Movement is monitored and logged. Educational staff, mental health staff, medical personnel staff and maintenance staff is required to be in possession of a radio when clients are moved within the facility.

C. The radio is monitored at all times for routine calls and emergency calls and signals. Staff use approved police codes for communications with control center.

D. During an emergency or evacuation, the control center serves as a command post.
[8.14.5.21 NMAC - N, 12/30/2005]

8.14.5.22 PERMANENT, ADMINISTRATIVE NIGHT SECURITY LOGS:

A. Staff in facility living units and the facility control center maintains a permanent log book which records all activity, including emergencies, routine events, all comings and goings client activities, and staffing for every shift. Staff review entries and initial the permanent log book at the beginning and end of each shift.

B. Staff on each shift of the living units completes an administrative log, for their respective living unit. The administrative night security log:

(1) documents physical or flesh checks at ten minute intervals on each shift, unless instructed to do more frequently;

(2) documents living unit safety, sanitation and damage inspections conducted at the beginning of each shift; and

(3) is submitted to the superintendent at the end of each shift.
[8.14.5.22 NMAC - Rp, 8 NMAC 14.6.9, 12/30/2005]

8.14.5.23 CLIENT COUNT AND MOVEMENTS:

A. Facilities maintain a constant and accurate facility master population roster in designated locations. The roster is adjusted for:

(1) admission;

(2) release;

(3) transfers between and within facilities;

(4) escape status; and

(5) presence off grounds for any reason.

B. Clients are counted facility-wide at regularly determined intervals, and client movement is monitored in the facilities.

C. Each living unit maintains a daily population roster sheet that provides an accurate client count. Staff assigned to the shift is responsible for

adding and deleting names when clients are received, released, or transferred.

D. Clients in secure confinement, and assigned to work areas, are recorded and maintained continuously on living unit daily population rosters.

E. Client movements between living units and facilities are recorded and verified in FACTS.

F. Formal counts are conducted:

(1) at 6:00 a.m., 3:45 p.m., 9:00 p.m., and 4:00 a.m; and

(2) whenever there is doubt regarding the whereabouts of a client.

G. On duty staff are responsible for knowing where clients are at all times. Educational staff, mental health staff, medical personnel staff and maintenance staff is required to be in possession of a radio when clients are moved within the facility.

H. Clients may be transported outside the facility for administratively-approved reasons. Precautions are taken to provide for client safety and public safety. Staffing requirements for transport are determined by the client's most recent SDM.

I. Staff reviews the safety and security provisions for housing a client away from a facility overnight for non-medical reasons prior to transporting the client. Staff obtains the superintendent's approval for the arrangements.
[8.14.5.23 NMAC - Rp, 8 NMAC 14.6.10, 12/30/2005]

8.14.4.24 RESPONSE TO PERSON HANGING:

A. A JJS facility staff member finding another person hanging by the neck places the highest priority on preserving the victim's life.

B. Each facility superintendent ensures that this policy and attendant procedure are:

(1) included with appropriate post orders as a permanent part of those post orders;

(2) included in the orientation training course for new staff and in training courses on life safety; and

(3) verifies a life safety kit is available and includes life safety scissors in all living units.

C. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.
[8.14.5.24 NMAC - N, 12/30/2005]

8.14.5.25 CONTRABAND CONTROL, SEARCHES AND

PRESERVATION OF PHYSICAL EVIDENCE FOR FACILITIES:

A. The superintendent posts designated deputy secretary approved juvenile justice services contraband list and policies and procedures in areas of client use. In addition, the superintendent requires staff responsible for orientation of clients to the facility provide each client with a copy of the designated deputy secretary approved search and contraband policy and procedures. Staff obtains the signature of the client acknowledging receipt of a copy of the policy and procedures.

B. The superintendent provides to staff a copy of the search and contraband policies and procedures for review as part of their orientation and annual training.

C. Facility staff may conduct or authorize searches anytime there is an articulated and documented safety or security issue. Staff may search clients, visitors, other staff, living units and program areas. Searches may be conducted to ensure health, safety and security, to control contraband or to recover missing persons or property. Upon entry to a secure facility, all vehicles and personal belongings are subject to being searched.

D. Facility staff conduct searches without the use of force. Searches are conducted in a manner that protects the dignity and respect of the person being searched.

E. Facility staff may conduct any of the following searches on clients:

(1) pat down;

(2) strip;

(3) room;

(4) general area;

(5) metal detectors (walk-through or wand);

(6) random; or

(7) routine.

F. JJS staff document all client searches on a search form. If any contraband is found on the client or in their property, it is noted on the form and filed in their master file and noted in FACTS. Contraband is confiscated.

G. Upon the facility superintendent's request and the designated deputy secretary approval, canine searches are authorized at JJS facilities by trained and certified federal, state and local law enforcement, department of corrections (DOC), and military personnel.

(1) JJS facilities may develop agreements with law enforcement, military and DOC for the use of canine searches at JJS facilities.

(2) Canine searches may not be used in conjunction with a strip or body cavity search.

(3) For safety and security and to

minimize interference, clients should not observe or be in close proximity of a canine search.

(4) Upon request of the canine team, JJS facility security staff may accompany the canine team.

(5) Persons are prohibited from harming or interfering in any manner with the canine or the canine team.

H. JJS facilities client searches are required:

(1) at initial intake;

(2) prior to movement of client by JJS facility transportation;

(3) when assuming custody of a client from another JJS facility or external entity;

(4) prior to and return from off campus movement/activity; and

(5) when there is documented reasonable suspicion that a client possesses contraband or other prohibited material.

I. Body cavity searches require prior written authorization from the superintendent; the superintendent notifies the designated deputy secretary of the decision prior to the body cavity search being conducted. Body cavity searches are not allowed for clients housed in a reintegration center.

J. Staff must document all living unit room, canine, strip and body cavity searches in the master file.

K. Pat down searches are conducted any time staff has reasonable belief that a client may possess contraband or prohibited material. Pat down searches require the following:

(1) Staff conducting the search must be the same gender as that of the client.

(2) Staff use latex gloves to conduct the search.

L. Strip searches are conducted when there is reasonable suspicion that weapons and/or contraband may be found. Strip searches require the following.

(1) A minimum of two staff members perform strip searches, one to observe and one to conduct the search.

(2) Staff conducting and observing a strip search must be the same gender as the client.

(3) Strip searches occur in a private area allowing observation only by staff directly involved in the search. Additional staff may be present nearby to ensure the safety of the person conducting the but not in an area from which they can view the client.

(4) Staff conducting a strip search may not touch the client.

(5) Strip searches may be part of a routine search at a JJS facility. This requirement may be waived during emergent situations, when the safety of clients and staff is

threatened. This includes placing a client on suicide intervention program (SIP) requiring search of clothing. Anytime a strip search requirement is waived, staff documents the reasons for needing to waive the requirement.

M. Body cavity searches are conducted when there is reasonable suspicion that a client possesses contraband undetectable by pat down or strip searches and may be concealed in a body cavity. Prior to requesting the body cavity search, staff must conduct pat down and strip searches. Requests are made in writing to the superintendent and upon written approval of the superintendent a body cavity search is conducted. Staff place the written recommendation for the body cavity search and the written permission of the superintendent in the client's master and medical files. Upon written permission and instruction by the superintendent, a client is taken to the emergency room of a medical or health facility where a physician conducts the body search for contraband using universal precautions, with a medical staff of the same gender as the client present to witness the search and record results.

N. Random searches are conducted in all areas that clients have access to on a scheduled and unscheduled basis. These searches are conducted for the safety and security of the clients, staff and facility, for contraband, sanitation standards and fire and safety hazards.

(1) Staff conducts the search in pairs, one to observe and one to conduct the search.

(2) Staff searches client rooms with the client present, unless the supervisor excludes a client who poses a threat to staff conducting the search or where the client's presence may compromise the integrity of the search. A supervisor excluding a client from witnessing a search documents the reason or reasons in the search report.

(3) Staff conducts and documents the search and submits the report to the juvenile correctional officer manager (JCOM) for review and approval. Upon approval, the search report is returned and filed in the retention file.

O. Staff may request in writing and with the approval of the superintendent the search of a specific room or area if there is reasonable belief of the presence of contraband or prohibited material. After obtaining the written approval of the superintendent, the staff member attaches the authorization for the search to the search report.

(1) In compliance with the above policies, staff conducts and documents the search with the client present if the client does not pose a threat.

(2) Upon completion of the

search, staff completes the search report form, attaches the search authorization form and forwards the report to the superintendent for review, signature and retention.

P. Visitors, staff and their personal property may be subject to a search.

(1) Visitor and staff searches must be conducted in a reasonable manner and use the least intrusive method as possible. Staff visually inspects visitors and staff to the facility and their vehicles and manually inspects all items brought in the facility.

(2) Before entering a juvenile justice services facility, visitors and staff may be subject to a search that involves one or more of the following:

(a) use of metal detectors (walk-through or wand);

(b) use of trained canines;

(c) visual inspection of property;

(d) requiring pockets to be emptied; and;

(e) removal and inspection of shoes.

(3) Notice of the search is clearly posted at facility entrances.

(4) Canine searches are used in a manner that preserves personal dignity.

(5) Searches of staff and visitors' belongings are conducted in their presence.

(6) Staff conducting the search may not touch the visitor or staff.

(7) If a visitor or staff member refuses a search or does not pass the metal detector search, staff conducting a search will require a search of visitor or staff property. Visitors may have future visiting privileges or entrance to the facility may be denied, while staff may be subject to other administrative action, as appropriate.

(8) If a visitor or staff brings contraband or prohibited material onto the grounds of the facility, the visitor or staff is denied access until the contraband or prohibited material is removed from the facility grounds.

(9) Visitors are prohibited from bringing the following items into a JJS facility:

(a) weapons (as identified in the following section) and personal defense items such as pepper spray;

(b) pornographic materials in any form including magazines, pictures or photographs of scantily clothed or naked people;

(c) gang paraphernalia;

(d) gum;

(e) tobacco or tobacco products;

(f) lighters or matches;

(g) alcohol or illegal drugs;

(h) glues, aerosols, solvents, liquid paper, permanent markers, poisons or any other toxicants;

(i) cell phones or pagers, unless

authorized by the designated deputy secretary;

- (j) metal nail file or nail clippers;
- (k) glass containers;
- (l) personal tools;
- (m) cellular phones or pagers;
- (n) cameras or video equipment;
- (o) walkmans/discmans;
- (p) any electronic or digital devices used for music or videos;
- (q) gameboys;
- (r) x-boxes, games cubes, play stations; and

(s) any other item perceived by searching staff to be dangerous; the items will be referred to the superintendent or designee and the designated deputy secretary for consideration;

(10) The above list of prohibited items is prominently posted at each entrance to a secure facility.

(11) Staff are prohibited from bringing the following items into a JJS facility:

(a) weapons (weapons (as identified in the following section) and personal defense items such as pepper spray;

(b) pornographic materials in any form including magazines, pictures or photographs of scantily clothed or naked people;

(c) gang paraphernalia;

(d) tattoo machines and/or paraphernalia;

(e) alcoholic beverages or ingredients used to produce alcoholic beverages;

(f) tobacco or tobacco products;

(g) lighters or matches;

(h) controlled substances and imitation controlled substances, drugs of any type or drug paraphernalia, excluding prescribed medications or over the counter medications in amounts greater than what is needed for twenty-four (24) period;

(i) glues, aerosols, solvents, liquid paper, permanent markers, poisons or any other toxicants;

(j) cell phones or pagers, unless authorized by the designated deputy secretary;

(k) cameras;

(l) personal tools;

(m) walkmans/discmans;

(n) any electronic or digital device used for music;

(o) gameboys;

(p) x-box game cube play stations;

(q) mouthwash (any type); and

(r) yeast.

(12) Items on the prohibited list may be seized during searches.

(13) Individual facilities shall not add items to the prohibited list. Request to include additional items on the list must be made in writing to the designated deputy secretary and include a justification for des-

ignating an item as contraband. Any suggested contraband revisions must provide reasons that are based on documented best practice or evidence. Any additions to the list shall be applicable to all juvenile justice services secure facilities.

Q. The following items are considered contraband:

(1) weapons, essential components for making a weapon, any object modified for use as a weapon or items or material capable of use as or manufacture of a weapon including but not limited to:

(a) guns;

(b) hand made weapons (shanks);

(c) nun chucks;

(d) screw drivers and other maintenance tools;

(e) chains;

(f) clubs;

(g) tasers or stun guns;

(h) kubotan;

(i) p-38 can openers;

(j) pepper spray; and

(k) knives/razor blades;

(2) tattoo machines and/or paraphernalia;

(3) gang paraphernalia;

(4) currency, except as allowed by

the superintendent;

(5) alcoholic beverages or ingredients used to produce alcoholic beverages;

(6) controlled substances and imitation controlled substances, drugs of any type or drug paraphernalia;

(7) glues, aerosols, solvents, liquid paper, permanent markers, poisons or any other toxicants;

(8) prescription and over-the-counter medications, unauthorized medications;

(9) any objects modified for escape, maps or plans;

(10) unauthorized clothing;

(11) walkmans/discmans;

(12) any electronic device used for digital music;

(13) gameboys;

(14) x-box game cube play stations;

(15) cell phones or pagers;

(16) cameras

(17) keys;

(18) ink pens;

(19) watches and other jewelry;

(20) mouthwash (any type);

(21) yeast;

(22) gum;

(23) social security cards or id cards of any type, including a driver's license; and

(24) stolen items.

R. All contraband discovered during searches is confiscated, inventoried, and stored until it is no longer needed as evidence.

(1) The superintendent designates

an evidence custodian to maintain contraband in a key-locked secure location and to ensure a chain of custody until the item is no longer needed. The key is accessible only to the superintendent and evidence custodian.

(2) Staff discovering the contraband places the contraband in an evidence bag, completes all information on a form called chain of custody and deposits the bag in a secured drop box.

(3) The evidence custodian initiates a form called chain of custody log for evidence item number to indicate control and maintain control of the evidence until it is no longer needed.

(4) The evidence custodian maintains a form called chain of custody transaction form on each evidence item. The evidence custodian may release evidence for valid reasons related to administrative or legal proceedings.

(5) Final disposition or destruction of contraband is documented on the chain of custody transaction form. After all administrative/legal proceedings have been concluded, the contraband is destroyed and/or disposed in accordance with procedures.

(6) Money seized as contraband is deposited in the trust fund of the client from whom it is taken, unless other ownership can be established. If ownership cannot be established, it will be deposited in the client's account.

(7) If staff confiscates or discovers a weapon or illegal drug, staff immediately informs the superintendent who then contacts the law enforcement agency with jurisdiction. For weapons and illegal drugs, the staff member confiscating or discovering the contraband documents the item on the chain of custody form and retains a copy of the chain of custody form for the records of the facility upon custody of items being accepted by a law enforcement agency.

S. For the safety and security of clients, staff and facility, the superintendent requires at least monthly inspections of the facility grounds and buildings. Inspections and searches for contraband occur after client contact with non-clients or visitors and facility events. Upon completion of the inspection and search staff completes, submits and files a written report with the superintendent.

T. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file. [8.14.5.25 NMAC - Rp, 8 NMAC 14.6.12, 12/30/2005]

A. Facility escape response plan

(1) The superintendent submits a plan to the designated deputy secretary and deputy director for facilities for approval annually in July to govern and direct the facility's response plan for escapes.

(2) Upon the designated deputy secretary's written approval, the superintendent immediately presents the facility escape response plan and this section of the policies and appropriate procedures to staff.

(3) All facility staff have access to escape response plans.

B. Initial reporting of escapes

(1) A staff member who witnesses, discovers, or suspects an escape from a facility, immediately notifies: the facility control center, Chief JPPO or designee or reintegration center manager or designee on duty to report the number of escaped clients, the names, physical descriptions, clothes worn, and any other identifying characteristics of the escaped client.

(2) The facility control center broadcasts a "10-90" radio call to all available facility staff. All radio communications are cleared and utilized only for the escape transmissions; all radio units are switched to an alternate/secured channel. All clients are to be taken to a secure environment and a formal count is conducted. The formal count is reported to the control center as soon as possible.

(3) The supervisor on duty or on call immediately contacts the superintendent who in turn immediately notifies the deputy director for facilities. The deputy director for facilities contacts the designated deputy secretary who notifies the secretary and the public information officer.

C. Responsibilities of the control center/chief JPPO /reintegration center manager

(1) The facility control center serves as the communication center for facility staff members involved in the escape search. The reintegration center manager or designee on duty directs the escape search.

(2) The control center staff or reintegration center manager or designee contacts law enforcement for notification of the escape and upon instruction from the superintendent requests law enforcement assistance for assistance in apprehending the escapee(s). Staff provides law enforcement with the client name, physical description, clothing description, ethnicity, home address, and home telephone number. Control center staff documents the date and time of each notification and the content of the notification in the control center log.

(3) In accordance with Section 31-26-11, NMSA 1978, the supervisor or

facility control center staff notifies the JPPO who authored the pre-disposition report and the office of the district attorney's victim notification of the client's escape. Facility staff documents the date and time of each notification, the content of the notification and the response.

(4) Staff notifies the client's parents or guardians of the escape.

(5) No information regarding the escaped client is given to the media until approved by the PIO and then only by staff designated to do so.

D. Living unit responsibilities

(1) Living unit staff immediately question clients from the living unit and/or group area; and

(2) Staff conducts a search of the client's room or living area, including all non-privileged mail and review telephone logs.

E. Authority to search for an escaped client off facility grounds:

Unless law enforcement accompanies staff, JJS staff are prohibited in policy, procedure and practice to search for client off grounds. The superintendent assigns staff members as necessary who may identify the escaped client to assist law enforcement personnel in a search off facility grounds.

F. Affidavits for arrest and warrants for arrest

(1) The superintendent assigns staff to obtain the information necessary for preparation of an affidavit for an arrest warrant on the escaped client. Staff prepares the affidavit and obtains the approval of the district attorney. After obtaining the district attorney's approval, facility staff either has the affidavit notarized or is sworn under oath by the district court judge as to the facts and information being true and correct to the best of his or her knowledge. The arrest warrant is signed by the district court judge and filed with the district court clerk. If the court is responsible for filing the warrant, facility staff verifies the filing.

(2) After obtaining the arrest warrant, facility staff distributes the arrest warrant to law enforcement agencies and personnel, to the committing district JPPO office and the county of escape. Staff documents arrest warrant information in FACTS.

(3) A copy of the arrest warrant is provided to the control center and a copy of the arrest warrant is placed in the client's master file.

G. Cancellation of warrants for arrest

(1) After the apprehension of an escaped client, the superintendent or designee notifies the district attorney to withdraw, cancel or quash an arrest warrant. After obtaining a copy of the filed warrant

return and notification of cancelled, withdrawn and quashed warrants, the superintendent sends a copy to law enforcement agencies, the CJPO of the committing district and the county of the escape.

(2) The superintendent or designee removes warrants for arrest from facility circulation after apprehension of the escaped client. The superintendent or designee places a copy of the filed arrest warrant return or order withdrawing, canceling or quashing an arrest warrant in the client's master file and updates FACTS.

H. Uniform crime report (UCR)

(1) The superintendent authorizes a manager or supervisor to complete a uniform crime report (UCR) and to give Miranda warnings to the client. If the client wants to give a statement, staff immediately stops the interview and contacts the client's attorney. Pending the client's meeting with the attorney, JJS staff do not question the client any further.

(2) If the escaped client is less than eighteen (18) years of age, the completed UCR is taken to the juvenile probation office in the county and to the district attorney's office in which the escape occurred.

(3) If the escaped client is eighteen (18) years of age or older, the completed UCR is taken to the New Mexico department of corrections adult probation office and to the district attorney's office in the county in which the escape occurred.

I. JJS special incident report: The JCOM completes and submits to the superintendent a JJS special incident report before the end of the shift and to the designated deputy secretary and deputy director for facilities by 10:00 a.m. the following day.

[8.14.5.26 NMAC - Rp, 8 NMAC 14.6.11, 12/30/2005]

8.14.5.27 FACILITY RECORDS MANAGEMENT:

A. Client master files are maintained in a uniform and chronological format.

B. Client master files contain written reports, progress notes, legal documents and correspondence relating to the client made during any stay at juvenile justice facilities or while under probation or parole supervision.

C. When a client is committed to a juvenile justice services facility for either a term commitment or a diagnostic evaluation, probation and parole copies and sends only those documents unavailable in FACTS to the YDDC records manager in a sealed envelope.

D. The identified documents for the facility casework sub-file are

transported with the client to YDDC and is addressed to the "records manager." The facility records manager/designee is the only person authorized to open the contents of the envelope.

E. When the newly created confidential facility casework sub-file is not sent to with the client, the JJS field staff mail the required documents, addressed to the "records manager" within two (2) business days, with a certified receipt to assure delivery to YDDC. This policy is utilized when hand delivery of documents is impossible.

F. The records manager maintains the client's master file in a central location.

G. Whenever the client is transferred to a different facility, the client's master file is transferred with the client in a secure container.

H. When the client is no longer in the custody of a juvenile justice facility the client's master file is returned to YDDC and stored in a secure central location.

I. The records manager controls access to the master file and is responsible for check-in/check-out. Facility staff may have access to all of a client's records, except only medical and behavioral health staff has access to medical and mental health records. All records are returned to the master file before the staff person leaves at the end of the day.

J. Any request for access to client records, for purposes of scholarly research must be forwarded to the designated deputy secretary for approval. The designated deputy secretary consults with the office of general counsel. For any approved request, the designated deputy secretary requires appropriate confidentiality agreements from the researcher before allowing access to the client records.
[8.14.5.27 NMAC - N, 12/30/2005]

8.14.5.28 EMERGENCY AND EVACUATION PLANS:

A. Facilities maintain written emergency and evacuation plans that are specific to the facility. As part of evacuation planning, facilities make arrangement in advance for housing clients during short-term and long-term evacuation. Plans take into account the different types of emergencies that may arise, such as different types and purposes of evacuation, need and procedure for additional staff or supplies, response to bomb threats, fires, population disturbances and needs for additional security.

B. Emergency and evacuation plans identify the location of fire fighting and other emergency equipment throughout the facility, instructions on the use of fire fighting equipment, and emer-

gency exists and floor plans.

C. Emergency and evacuation plans include provisions for power and communication interruption or failure.

D. Facilities with locked individual rooms have a means for the immediate release of clients and provisions for back-up release of electronic locks in case of emergency.

E. Emergency and evacuation plans are reviewed with the New Mexico fire marshal and local police and fire authorities trained in the application of the appropriate codes.

F. Emergency and evacuation plans are reviewed at least annually by the facility superintendent, and are submitted for written approval to the designated deputy secretary.

G. Facility staff are trained in the implementation of emergency and evacuation plans. Plans and training include specific staff task assignments, such as plans and assignments for releasing and supervising clients, distribution of safety and security equipment and preservation of records. Training is documented in staff files. Whenever the emergency or evacuation plan changes, facility staff are trained in the changed plan as soon as practicable, and in any event no later than 30 days after the change.

[8.14.5.28 NMAC - Rp, 8 NMAC 14.6.15, 12/30/2005]

8.14.5.29 EMERGENCY AND EVACUATION EVENTS:

A. The facility superintendent has the authority to implement an emergency or evacuation plan. In the absence of the facility superintendent, responsibility for implementing the emergency or evacuation rests with the highest-ranking employee who must ensure there is adequate justification to implement the emergency or evacuation plan.

B. The superintendent or other employee implementing the emergency or evacuation plan consults with the local emergency authority and selects the evacuation destination.

C. The superintendent or other employee implementing the emergency or evacuation plan notifies the following persons and agencies of the plan's implementation:

(1) the juvenile justice services deputy director for facilities, who in turn notifies the department secretary and designated deputy secretary;

(2) local emergency response and law enforcement agencies and personnel;

(3) living unit and other staff on duty;

(4) medical and mental health staff;

(5) off-duty staff as required; and

(6) evacuation destination agencies and personnel.

D. If the emergency or evacuation plan requires modification in a particular set of circumstances, the superintendent provides notification as necessary to implement the modification.

E. During the evacuation, staff members with specific responsibility for clients under the emergency evacuation plan assemble the clients, account for the clients against the client roster and collect the records, client prescription drugs and emergency equipment, including first aid kits.

F. Supervisory staff having responsibility for clients in separation (isolation), immediately radio for assistance if a client poses a threat to self or others. The supervisor may approve the use of physical or mechanical restraint as necessary to assure safety in the circumstances immediately notifies the facility superintendent of any such use of restraints and completes the appropriate report.

G. Control center staff distributes safety and security equipment including medical and evacuation kits, restraint and radio equipment, population sheets and index files, unless otherwise provided for in the facility emergency or evacuation plan. In facilities that do not have a control center, staff members are designated to distribute the equipment and materials.

H. The facility superintendent assigns vehicles for use during the emergency or evacuation.

I. The maintenance supervisor assigns maintenance staff to assemble transport, if necessary, tools for repair of vehicles that may break down.

J. On orders from the maintenance supervisor, maintenance staff shuts off all electrical systems, including backup generators and gas-operated equipment that pose a threat to state resources or property.

K. Travel routes are reported to New Mexico state police.

L. Vehicles transporting clients travel as a group with a lead car and at least one security chase car.

(1) Staff equips vehicles used to transport clients with a portable or mobile radio and cellular telephone. Staff equips or uses both the lead car and security chase car with vhf and uhf radios.

(2) Control center staff ride in the lead car and serve as command post during the transport of clients.

(3) Medical staff are included in any evacuation transport of clients.

M. Upon reaching the evacuation destination, staff contacts parents or guardians of clients for whom they are responsible.

[8.14.5.29 NMAC - N, 12/30/2005]

8.14.5.30 EMERGENCY POWER AND COMMUNICATION:

A. Facilities have a communication system available for internal and external communications for use in emergencies.

B. The maintenance supervisor conducts an inspection of the emergency generation at least weekly and conducts a load test quarterly and submits a written report of the load testing to the facility superintendent within the next working day. The maintenance supervisor maintains written documentation of the inspection and load tests.

C. The fire safety officer conducts quarterly emergency equipment and systems testing, submits written reports to the superintendent within the next working day. The fire safety officer maintains written documentation of the testing.

D. If there is a power or communication interruption in a facility that has a control center, staff immediately reports to the control center using cellular phone or two-way radio. The control center notifies the facility superintendent, facility safety officer and maintenance officer of the power or communication interruption.

E. The control center coordinates with the facility superintendent to survey the affected area(s), identify specific problems and related emergencies and determine appropriate course of action.

F. The facility superintendent uses the facility emergency plan to coordinate client counts and movement of clients and staff to safe areas, as necessary, for client and staff safety and facility security during the power or communication interruption or failure.

G. The control center staff contacts the maintenance supervisor to monitor the operation of the emergency generator during the power or communication interruption or failure. Control center staff maintains constant communication by the two-way radio between the control center and the staff monitoring the operation of the emergency generator.

H. Designated staff contacts the maintenance supervisor to monitor the operation of the emergency generator during the power or communication interruption or failure and maintains constant communication by the two-way radio between the control center and the staff monitoring the operation of the emergency generator.

I. After the power or communication interruption or failure, the facility superintendent assigns staff to inspect and report the reasons for the interruption or failure, the extent of any damage to equipment and recommendations for repair and corrective action. If the facility

has a maintenance supervisor and control center supervisor, they are included in the assignment.

[8.14.5.30 NMAC - Rp, 8 NMAC 14.6.16, 12/30/2005]

8.14.5.31 HOUSEKEEPING AND LIVING UNIT MAINTENANCE:

Living unit staff organizes and assign tasks for maintaining the cleanliness and sanitation of the living unit area. Tasks are shared as equally as possible among all the living unit clients, unless medical considerations require an exception. Housekeeping and maintenance assignments are not utilized as reward or punishment for clients.

[8.14.5.31 NMAC - N, 12/30/2005]

8.14.5.32 FIRE SAFETY:

A. Facilities comply with fire safety codes, including monthly fire drills, prevention programs, quarterly and annual inspections, equipment testing for approved fire protection equipment and its availability.

B. The fire safety officer is certified in the appropriate fire and safety codes as provided by national fire protection association (NFPA), occupational safety and health administration (OSHA), or federal emergency management association (FEMA).

C. The fire safety officer verifies that fire drills are conducted monthly on all shifts and documented and maintained in the fire safety officer's records.

(1) Assigned staff provides fire safety information including fire drill procedures to clients upon the client's entry into the program.

(2) The fire safety officer or assigned staff conducts a monthly fire drill in all occupied areas and locations. In living units drills are conducted at varied times to ensure each shift has one drill quarterly. All fire drills are documented in writing and specify the location and times the drill began and ended, the individual conducting the drill, the number of clients and staff present for the drill, the number of clients and staff who were absent from the area during the drill, the type of drill (obstructed or unobstructed), and any problems encountered during the drill.

D. The fire safety officer is responsible for scheduling required testing and certification of all fire suppression or detection equipment, including:

(1) weekly inspections of emergency generators;

(2) monthly inspections of fire extinguishers, smoke detectors, and emergency lighting;

(3) quarterly emergency generator load tests and an outside independent source inspection of the fire suppression

system;

(4) semiannually, coordinating for an outside source inspection and cleaning of kitchen hood fire suppression systems; and

(5) annually, coordinating outside source inspections of the fire alarm and all suppression systems and a fire hydrant inspection and flow test.

E. The fire safety officer conducts and documents weekly fire and safety inspections. The written fire safety inspection reports are submitted to the facility superintendent and maintained in the inspection file.

(1) When deficiencies are found during any inspection, the fire safety officer is responsible for reporting the deficiencies in writing to the superintendent or designee, contacting the appropriate individual to make repairs within seven (7) calendar days. Life safety deficiencies are corrected immediately and a follow-up inspection is conducted within forty-eight (48) hours.

(2) When inspections reveal that any fire safety equipment is inoperable, fire watches in the affected area is immediately implemented.

F. Flammable, toxic or caustic materials are inventoried, locked and their use is controlled.

(1) The fire safety officer is responsible for maintaining current material safety data sheet (MSDS) information in the safety security manual.

(2) MSDS' are kept on file in all areas in which hazardous materials are used and in safety and security manuals. MSDS' are updated annually or as new or different products are order and used.

G. The fire safety officer reviews products that are caustic, toxic or flammable at facilities and determines which products can be replaced with non-hazardous materials.

(1) The fire safety officer reviews and approves, prior to purchase, requisitions for caustic, toxic and flammable materials.

(2) All product containers are checked for leakage or damage upon receipt. Leaking or damaged product containers are returned to manufacturers or disposed of in accordance with Hazardous Waste Act.

H. Clients are not permitted to smoke in the facilities. The superintendent assigns a designated smoking area for staff, outside of client sight.

I. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file [8.14.5.32 NMAC - Rp, 8 NMAC 14.6.14,

12/30/2005]

8.14.5.33 KEY, TOOL, EQUIPMENT AND VEHICLE CONTROL:

A. Keys, tools, vehicles, culinary and medical equipment are inventoried and controlled.

(1) All tools are assigned an inventory number and are listed on an inventory sheet in a master inventory file kept by the facility which lists all tools. In addition to the daily perpetual inventory the supervisor or designee performs a weekly inventory of tools and equipment.

(2) Tools used for mobile work assignments are inventoried to numbered tool boxes.

(3) Shadow boards are used to identify type, size, location and storage of tools.

(4) A daily perpetual inventory is maintained to identify those tools that are in use.

B. At the end of each workday the maintenance department supervisor or designated facility staff conducts a tool inventory.

C. Only authorized kitchen staff may access and use kitchen culinary utensils.

D. All knives, cleavers, and other sharp, culinary utensils used in the kitchen are assigned inventory numbers and are listed on an inventory sheet in a master inventory file. In addition to the daily perpetual inventory, the supervisor or designee performs a weekly inventory of tools and equipment.

E. Locked shadow boards that are located in locked offices are used to identify type, size, location, and storage of knives, cleavers, and other sharp, culinary utensils.

F. Only medical staff may access and use medical equipment.

G. Surgical blades and dental equipment are stored in a locked area and listed on inventory sheets in master inventory files.

H. A daily perpetual inventory is maintained to identify those items that are in use.

(1) Needles and syringes are stored in the original sealed containers in a locked area. The number of stored containers is noted on an inventory listing.

(2) Needles and syringes are checked out of storage by date, time and signature. The used needles and syringes are placed in a locked area and inventoried on a daily inventory sheet.

I. Used needles are disposed of in a clearly marked hazardous waste sharps disposal receptacle. The receptacle is removed monthly or more often as needed and disposed of in accordance with bio-hazard procedure.

J. If an item is unaccounted, the superintendent or designee and facility administrator is immediately notified and a missing medical equipment report is completed.

(1) The superintendent, facility administrator, designee determines the need for a facility search. Once a search is initiated, only the superintendent, facility administrator or designee can give orders to stop the search.

(2) The superintendent or facility administrator designates supervisory staff to conduct an investigation and report results. At a minimum, the investigation identifies:

(a) type of medical instrument or equipment, time instrument or equipment was reported missing, where instrument or equipment was last used and by whom;

(b) results of search;

(c) recommendations; and

(d) corrective action.

K. The medical supervisor and a facility administrator designated by the superintendent conducts a weekly inventory of the medical equipment including a separate inventory for bladed and pointed instruments and needles and syringes and send a copy of the completed inventory each week to the staff member designated by the superintendent to maintain the master inventory file.

L. A designated individual maintains a facility key inventory listing which identifies the location of keys and associated locks.

M. Facility keys are marked "do not duplicate".

N. Permanently assigned keys are inventoried to specific individuals who acknowledge receipt by signing the inventory log. An annual physical inspection of the keys is performed in January by the maintenance supervisor and all information is kept in the maintenance office.

O. Keys that are not permanently assigned are not to be taken outside the facility.

P. Control center staff or facility administrator is responsible for issuing keys maintained at the control center. Key cabinet keys are maintained on a pass-down key ring.

Q. Control center staff issues keys to authorized employees who sign the department approved temporary key assignment form acknowledging receipt of the key. When the key is assigned out staff replace the key with a key issuance tag to indicate the key is temporarily assigned.

R. When the employee returns the key, the control center staff initials the key inventory form, and returns the key to the cabinet.

S. At the end of each shift the control center staff inventories the status

of the key control cabinet and verifies accountability on key form. The inventory sheet is completed at the end of each shift.

T. The 10:00 p.m. to 6:00 a.m. staff forwards the completed daily key inventory for the control center supervisor for review.

U. If keys are not returned at the end of a staff member's shift, the control center staff attempts to contact the employee to have the key returned. Control center staff records all attempts to contact the staff member with the missing key in the control center log.

V. Restricted keys include those permanently assigned to administrative or as designated staff by the superintendent or designee. Copies of restricted keys are not kept in the key control box.

(1) Staff who is assigned restricted keys acknowledges receipt in writing from the key control officer.

(2) Restricted keys are not loaned out.

W. Emergency keys are painted red for easy identification.

(1) Emergency keys are secured in a controlled area separate from the main key cabinet.

(2) The emergency key box is permanently sealed but has a glass front.

(3) When an emergency key is needed, the on-site senior staff authorizes the glass to be broken to access emergency keys.

X. Emergency keys are given to law enforcement or fire department personnel in case of emergency.

Y. Personal and state vehicles are parked in designated areas; vehicle doors and trunks are kept locked.

Z. Vehicles are not parked in fire lanes or fire zones.

AA. Clients are not allowed access to vehicle keys or any other keys.

AB. Unattended vehicles are not left with engines running.

AC. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file. [8.14.5.33 NMAC - Rp, 8 NMAC 14.6.13, 12/30/2005]

8.14.5.34 FACILITY FOOD SERVICE:

A. A staff member or contractor trained and experienced in food service management supervises food service operations, including budgeting, purchasing, accounting practices and compliance with applicable child labor laws, sanitation and health codes.

B. The food service super-

visor monitors and supervises the food services and maintains an accurate record of the meals served daily and the categories of persons (clients, staff, guests) served the meals, of the menus and cycle of menus, of the food costs and nutritional value of meals, of vendors (including current products and pricing), of daily, weekly and monthly sanitation and cleaning of food service facilities, of inspections by local, state and federal health or sanitation officials, of food service employee information, and of contingency plans and emergency plans for continuing food service during interruptions and emergencies.

C. The superintendent requires that the food service supervisor and contract food service provider obtain an annual review by a registered dietician of the facility's system of dietary allowance, adjusted for age, gender and activity, to meet standards for basic nutritional needs. The review is kept in the administrative file for facility food services.

D. Clients are served meals that are nutritionally adequate and properly prepared.

E. The superintendent requires that the food service supervisor and contract food service provider obtain an annual review by a registered dietician of the facility's system of dietary allowance, adjusted for age, gender and activity, to meet standards for basic nutritional needs. The review is kept in the administrative file for facility food services.

F. The food service supervisor serves clients at least three (3) meals at regular meal times each twenty-four (24) hour period, including at least two (2) hot meals, and with no more than fourteen (14) hours elapsing between meals.

(1) Any variations based on weekend and holiday food service demands are allowable as long as the components of Subsection F of 8.14.5.34 NMAC are met.

(2) The food service supervisor conducts annual surveys to determine client food preferences, documents responses, and submits the documentation to the registered dietician for consideration in the annual menu preparation.

G. Special diets are provided as prescribed by the medical authority and dental personnel.

H. Religious diets are provided to clients whose religious beliefs require adherence to religious dietary laws. The food service supervisor provides special diet meals on prescription of a doctor or dentist for a client and religious diets meals requested by or through the facility chaplain or designated staff member. The food service supervisor requires written, specific and complete special diet prescriptions and religious diet requests. Written records are

maintained of ordered and served medical and religious diets.

I. Food, including snacks, is not withheld, and the menus are not adjusted as a disciplinary measure.

J. Staff supervises clients during meals.

K. There is health protection for clients and staff working in food services.

L. The food service supervisor obtains the current and applicable federal, state, and local sanitation and health laws, codes and regulations and maintains compliance of the food service with the laws, codes, regulations and CYFD policy and procedure.

M. The food service supervisor maintains a copy of all sanitation and health inspections of the food service. These records are kept in the food service office in accordance with NMAC records retention rules and regulations.

N. The food service supervisor inspects the food service premises and operation at least weekly and assigns food service staff to conduct daily sanitation inspections including pest control, monitoring the daily food storage and refrigeration and water temperature, provision of special and religious diets, and food service line procedures.

O. The food service supervisor or designee documents the daily inspections and requires the timely completion of the appropriate corrective action for any deficiency. The food service supervisor documents, in writing, the daily inspection, deficiencies and corrective action.

P. The facility food services supervisor provides an orientation for food service staff, contract food service providers and clients working in food services and periodic in-service training. The food service supervisor documents the orientation and training, including the content of the material presented, attendance and documents the information in the administrative food services file. During the orientation, the food services supervisor includes the following information:

- (1) a two (2) hour on-site orientation for new staff;
- (2) personal health and cleanliness;
- (3) correct hand washing procedure;
- (4) sources of food borne illnesses;
- (5) route of transmission of bacteria in equipment;
- (6) cleaning and sanitizing of equipment;
- (7) use and care of equipment;
- (8) techniques to minimize sanitation hazards during handling, storage,

preparation and serving of food;

- (9) care and storage of supplies; and
- (10) safety techniques, including tools and utensils.

Q. The food service supervisor requires health and safety protection for all clients, guests and staff in the food services area of the facility, including contract food service providers. The food service supervisor notifies the facility superintendent immediately of health or safety hazards or failures of health and safety protection in the food service area and documents the report in writing immediately upon the discovery or occurrence. These records are kept in the food service office.

(1) The superintendent or designee requires medical screening of food service personnel as allowed and required by state law and regulation, including annual tuberculosis testing, and the retention of records of the required medical screening by the food service supervisor.

(2) Medical screening information is secured in a confidential file.

(3) Clients working in food services are cleared by medical staff.

R. The food service supervisor or designee monitors food service staff and clients daily for health and cleanliness:

(1) minor skin eruptions and cuts are covered completely with an antiseptic preparation;

(2) hair nets are worn; and

(3) employees are clean in person and wear clean uniforms.

S. Food service staff do not use tobacco or consume food or beverages while engaged in food preparation and service.

T. All food handlers are instructed and expected to wash their hands upon reporting for duty, after using toilet facilities, and after work breaks.

U. A sample tray is prepared after each meal and placed in the freezer for 72 hours; the meals' service time and date is documented.

V. The food service supervisor stores food at the temperature and under the conditions required by local and state health regulations.

W. The food service supervisor uses the more stringent of the local and state health regulations or the following standards:

(1) For the storage of staples or non-perishable food: in a ventilated storeroom temperature controlled to no lower than 45 degrees or higher than 80 degrees fahrenheit, documented daily, with durable, easily cleaned shelves for storage located at least six inches off the floor.

(2) For the storage of perishable

food: in a reach-in or walk-in refrigerator the temperature is controlled to no lower than 35 degrees or higher than 40 degrees fahrenheit, with a thermometer in plain view, and in a freezer temperature controlled to remain at 0 degrees or below fahrenheit, documented daily.

(3) The food service supervisor requires that refrigerated and frozen foods are stored in compliance with local and state health authority laws and regulations, documents daily temperature monitoring of food, refrigeration and water to meet local and state laws and regulations.

X. Weekly, the food service supervisor prepares and publishes to food service personnel a written equipment and food service area cleaning schedule assigning specific duties.

Y. The superintendent or designee contracts with an approved vendor for monthly vermin and pest inspections with routine and emergency extermination.

Z. Sanitation and good housekeeping practices which diminishes sources of food, water, and shelter for pests is critical including:

(1) leftover food scraps, used disposable napkins, utensils, and plates are placed in plastic lined containers with the ends tied and disposed of in closed lid dumpsters which are located outside and;

(2) the food service director inspects food service locker room(s) and lockers weekly for cleanliness.

[8.14.5.34 NMAC - Rp, 8 NMAC 14.5, 12/30/2005]

8.14.5.35 FACILITY PLANT MONITORING AND ASSESSMENT:

A. Occupied facility areas are inspected and the inspections are documented daily. Unoccupied areas are inspected at least weekly. The date and time of inspections are documented. Staff submits maintenance requests for any damages found during inspections.

B. Security devices and areas within a facility are inspected at least weekly and maintained. Corrective action plans are submitted to the facility superintendent, who monitors corrective actions until completed. Deficiencies are submitted to maintenance personnel for repair.

C. The facility superintendent performs a weekly inspection of the physical plant. Findings are documented and maintained in an inspection file. Referrals to respective supervisors for corrections and follow-up inspections are conducted within a specified time period.

D. The facility superintendent submits an annual report to the designated deputy secretary and deputy director of facilities concerning the status and needs of the physical plant, to include:

(1) immediate and long-term

plans to identify and correct physical plant deficiencies, including space requirements, and the estimated expense of correcting the deficiencies;

(2) a summary of the previous year's preventive maintenance program outcomes; and

(3) capital improvement needs, including:

(a) alternatives considered;

(b) a staged implementation plan for the capital improvement;

(c) the anticipated effect of consequences if funding is unavailable, and identification of any stop gap measure that would address any health or safety issue;

(d) a summary and analysis of the previous year's preventive maintenance program leading to the proposal for the capital improvement; and

(e) requests for equipment acquisition.

[8.14.5.35 NMAC - Rp, 8 NMAC 14.3.16, 12/30/2005]

8.14.5.36 TRANSPORTATION OUTSIDE A JJS SECURE FACILITY:

A. Staff members transporting clients housed in a secure juvenile justice services facility use department approved and issued mechanical restraints on clients. The superintendent may exempt, in writing, the use of mechanical restraints for a specific transport. Exemptions from the use of mechanical restraints are allowed in exceptional circumstances, determined on a case-by-case basis. Prior to transporting a client, staff search a client according to 8.14.1.36 NMAC.

B. Clients in a secure facility participate in community-based programs when:

(1) preparatory measures, as outlined in procedures, are taken to ensure the client, staff and public safety; and

(2) department approved documents are completed and submitted to the designated deputy secretary/designee for written approval prior to the client's participation in the community based program;

(3) staff members transporting clients housed in a reintegration center do not use mechanical restraints on clients.

C. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file. [8.14.5.36 NMAC - N, 12/30/2005]

8.14.5.37 CHILD ADVOCACY GROUPS:

A. Approved advocacy personnel have access to staff, administrators, clients and client records.

B. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file. [8.14.5.37 NMAC - N, 12/30/2005]

8.14.5.38 SANITATION AND HYGIENE: CYFD's facilities have housekeeping and maintenance procedures that conform with sanitation, fire and safety codes, and that maintain hygienic living conditions for clients.

[8.14.5.38 NMAC - Rp, 8 NMAC 14.9.8, 12/30/2005]

8.14.5.39 GANG MANAGEMENT: Juvenile justice services provides for and engages clients in pro-social skills development programs and services that work toward diminishing and eliminating gang involvement.

[8.14.5.39 NMAC - N, 12/30/2005]

HISTORY OF 8.14.5 NMAC:

Pre-NMAC History: The material in this part replaces the material that was previously filed with the State Records Center under:

DDC/GS 10-60, Special Leave of Absences for Juveniles, filed 5/23/90.

YDDC/GS 15-01, Equal Opportunities for Juveniles Programs, filed 5/23/90.

YDDC/GS 06-20, Participation in Religious Programming, filed 5/23/90.

YDDC/GS 06-21, Provision of Staff and Resources for Religious Program, filed 5/23/90.

YDDC/GS 08-02, Classification for Reintegration Center Transfers, filed 5/23/90.

YDDC/GS 08-10, Classification of Juveniles with Special Needs, filed 5/23/90.

YDDC/GS 08-11, Juvenile Releases, filed 5/23/90.

BS 67-19, Boys Personal Property, filed 5/23/67.

BS 67-23, Students Supervision, filed 5/23/67.

BS 67-45, Students Personal Property, filed 5/23/67.

BS 67-49, Organization and Management Policy Cigarette and Candy Issue, filed 5/23/67.

BS 67-53, Students Notification of Parents Change of Status, filed 8/16/67.

BS 67-54, Students On-Campus Group Work, filed 9/5/67.

YDDC/GS 07-05, Escape Plans, filed 5/23/90.

YDDC/GS 07-06, Emergency and Evacuation Plans, filed 5/23/90.

YDDC/GS 07-14, Disturbance, Riots and Hostage Situations, filed 5/23/90.

YDDC/GS 07-20, Bomb Threats, filed

5/23/90.
 BS 67-15, Administrative Morning Report, filed 5/23/67.
 BS 67-16, Charting Procedure, filed 5/23/67.
 BS 67-27, Security, filed 5/23/67.
 BS 67-40, Students Concerning Reports to the Administration Regarding Runaways, filed 5/23/67.
 BS 67-41, Students Procedure for the Cooperative Search and Apprehension of New Mexico Boys School Runaways, filed 5/23/67.
 BS 67-43, Students Work Pass Policy, filed 5/23/67.
 BS 67-47, Organization and Management Policy Institutional Safety Inspection, filed 5/23/67.
 BS 67-57, Students Procedure for the Cooperative Search and Apprehension of New Mexico Boys School Runaways, filed 11/13/67.
 BS 67-22, Students Discipline, filed 5/23/67.
 DDC/GS 10-11, Mail Regulations, filed 5/23/90.
 YDDC/GS 10-12, Resident Telephone Regulations, filed 5/23/90.
 YDDC/GS 10-50, Visiting on Grounds with Residents, filed 5/23/90.
 BS 67-29, Students Parents Visiting Lodges, filed 5/23/67.
 BS 67-50, Undated, Students Visiting, filed 5/23/67.
 BS 67-56, Communications Mail, filed 9/18/67.

History of Repealed Material:

8 NMAC 14.3, Facility Programs, filed 11/2/98 - Repealed effective 12/30/2005.
 8 NMAC 14.5, Facility Food Service, filed 11/2/98 - Repealed effective 12/30/2005.
 8 NMAC 14.6, Facility Safety and Security, filed 11/2/98 - Repealed effective 12/30/2005.
 8 NMAC 14.7, Facility Rules and Discipline, filed 11/2/98 - Repealed effective 12/30/2005.
 8 NMAC 14.8, Clients' Access to Communication, filed 11/2/98 - Repealed effective 12/30/2005.
 8 NMAC 14.9, Facility Sanitation and Hygiene, filed 11/2/98 - Repealed effective 12/30/2005.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

This is an amendment to 8.14.4 NMAC, Sections 6-10, 12-14, 18, 20-22, 24-28, 30, 31, effective 12/30/2005.

PART 4 FACILITY MEDICAL AND ~~MENTAL~~ BEHAVIORAL

HEALTH SERVICES

8.14.4.6 OBJECTIVE: To establish standards and procedures for providing medical and ~~mental~~ behavioral health care to clients in the facilities of the juvenile justice services of the children, youth and families department.
 [8.14.4.6 NMAC - Rp, 8 NMAC 14.4.6, 8/31/2004; A, 12/30/2005]

8.14.4.7 DEFINITIONS:

A. 15-day diagnostic evaluation refers to the court-ordered evaluation of a child committed to the legal custody of CYFD for purposes of diagnosing the child and preparing a report to the court indicating what disposition appears most suitable when the interests of the child and the public are considered. See NMSA 1978 Section 32A-2-17(D). 15-day diagnostic evaluations are conducted at YDDC or a licensed community provider.

B. 15-day diagnostic evaluation report refers to the written report prepared for the court incorporating the findings of the 15-day diagnostic evaluation.

~~[W.]~~ **C. ~~Mental~~ Behavioral health staff** refers to employees assigned to the ~~mental~~ behavioral health unit of a facility, including Appropriately-licensed physicians, psychiatrists, psychologists, and social workers.

~~[C.]~~ **D. Central intake** refers to the entry point at YDDC, for clients who have at least a one-year commitment.

~~[D.]~~ **E. Classification** refers to the system and procedure through which new clients are assessed and assigned to the appropriate facility and living unit.

~~[E.]~~ **E. Client** refers to a person who is committed to the custody of CYFD's juvenile justice services and/or who is receiving services from CYFD's juvenile justice services.

~~[F.]~~ **G. Continuum of behavior management** refers to the systematic analysis by staff of a threatening circumstance involving a client with the potential of causing injury or death and the systematic application of approved behavior management procedures.

~~[G.]~~ **H. Contract staff** refers to persons who are under contract with CYFD to provide contractually-specified medical or ~~mental~~ behavioral health care services to juvenile justice facility clients.

~~[H.]~~ **I. Core programming** refers to standardized programming required for all clients, including counseling and ~~mental~~ behavioral health programs as indicated.

~~[I.]~~ **J. CYFD** refers to the New Mexico children, youth and families department.

~~[J.]~~ **DCRC** refers to a department community residential center, including Albuquerque boys' reintegration center, Carlsbad reintegration center, Eagle Nest reintegration center, and LaPlacita reintegration center.]

K. Facility refers to a facility operated by, or on behalf of, CYFD's juvenile justice services, for purposes of housing and providing care for clients committed to the custody of CYFD. The facilities include: J. Paul Taylor center, New Mexico boys' school, New Mexico girls' school, YDDC, camp Sierra Blanca and the ~~[DCRCs]~~ reintegration centers.

L. First aid refers to care for a condition requiring immediate assistance from an individual trained in first aid care.

M. HIPAA privacy officer refers to the person designated by the secretary to implement compliance with the privacy provisions of the Health Insurance Portability and Accountability Act of 1996.

N. Incident report refers to notification to the ~~juvenile justice services director~~ designated deputy secretary for juvenile justice services of an incident, for review by the ~~director~~ designated deputy secretary. Medical and ~~mental~~ behavioral health-related incident reports are also copied to the facility level medical and/or ~~mental~~ behavioral health director.

O. Intake ~~mental~~ behavioral health screening refers to a system of structured observation/initial ~~mental~~ behavioral health assessment of newly arrived clients, for purposes of determining ~~mental~~ behavioral health treatment needs and appropriate facility placement.

P. Intake medical screening refers to a system of structured observation/initial medical assessment of newly-arrived clients.

Q. Isolation refers to any instance in which a client is confined alone for over 1 hour; either in a room other than the room in which the client usually sleeps, or in the client's room at a time when the client would otherwise be at liberty to leave the room. This does not include protective isolation for injured clients or clients whose safety is threatened, nor routine isolation at the time of client admission.

R. Juvenile justice services refers to the organizational unit within CYFD that operates juvenile justice facilities, and provides other services under the Delinquency Act, NMSA 1978 section 32A-2-1 et seq.

S. ~~[Juvenile justice services director refers to the designated director of CYFD's juvenile justice services.]~~ [Reserved]

T. Living unit refers to an area in a CYFD facility where clients are

assigned to perform their daily activities and to sleep.

U. Mechanical restraint refers to a device approved through the behavior management program, used to limit the movement of a client's body for safety reasons.

V. Medical staff refers to employees assigned to the medical unit of a facility, including appropriately-licensed physicians, psychiatrists, physician's assistants, nurse practitioners, registered nurses (RNs), licensed practical nurses (LPNs), and EMTs.

W. [Reserved]

X. Mid-level provider refers to medical staff at the level of physician's assistant or nurse practitioner.

Y. Pharmaceutical refers to a medication of any chemical compound or narcotic (listed in the U.S. pharmacopoeia or national formulary) that may be administered to humans as an aid in the diagnosis, treatment or prevention of disease or other abnormal condition; for the relief of pain or suffering; or to control or improve any medical or ~~mental~~ behavioral health condition.

Z. Physical intervention refers to physical contact of a client by staff to control or restrict the movement of the client to protect the health or safety of the client, staff or another person, using a technique approved by CYFD and taught in a CYFD-approved course.

AA. Physician refers to an individual with a medical degree (M.D. or D.O.) appropriately licensed to practice in New Mexico.

BB. Psychiatrist refers to a physician who is specialized to practice in the area of psychiatry and ~~mental~~ behavioral health, and appropriately licensed to practice in New Mexico.

CC. Psychologist refers to an individual with a degree in psychology or a master's degree in a related field.

DD. Receiving facility refers to the facility to which a client is being transferred.

EE. Secretary refers to the secretary of CYFD.

FF. Sending facility refers to the facility from which a client is being transferred.

GG. Social worker refers to a person who is licensed by the New Mexico board of social work examiners.

HH. Staff refers to employee(s) of CYFD who are assigned to work at juvenile justice services facilities, and who are not medical ~~non-mental health~~ staff.

II. Superintendent refers to the chief facility administrator at the J. Paul Taylor center, New Mexico boys' school, or YDDC. Superintendent also refers to the chief facilities administrator for

the ~~DCRCs~~ reintegration centers.

JJ. Verbal de-escalation refers to a non-physical dialogue with a client, about the concern or issue upsetting the client. The dialogue has no time limit.

KK. YDDC refers to the youth diagnostic and development center. [8.14.4.7 NMAC - Rp, 8 NMAC 14.4.7, 8/31/2004; A, 12/30/2005]

8.14.4.8 MEDICAL DIRECTOR AND ~~MENTAL~~ BEHAVIORAL HEALTH DIRECTOR:

A. Medical director at department level, juvenile justice services level, and facility level

(1) CYFD designates a department level medical director to oversee the provision of health care to all CYFD's clients, including the provision of medical services at juvenile justice services facilities. The department level medical director must be an appropriately licensed physician.

(a) The department level medical director is CYFD's final authority on medical matters.

(b) The department level medical director annually reviews and approves all policies and procedures relating to the provision of medical care in juvenile justice services facilities.

(c) The department level medical director is the final decision-maker for any questions that arise regarding the application of medical policies and procedures in specific circumstances.

(d) The department level medical director may designate other persons to act on behalf of the medical director in specified circumstances.

(2) CYFD designates a medical director for juvenile justice services, who may also be the department level medical director, and who is responsible for overseeing medical care delivery within juvenile justice services. The juvenile justice services level medical director may be an appropriately-licensed mid-level provider or physician, health care administrator, or health care agency. The facilities inform the juvenile justice services level medical director of all hospitalizations, serious injuries, surgeries, deaths, serious suicide attempts, medication error, serious accidents, serious sudden illness, failure to follow medical procedures, and failure to implement medical care orders, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

(3) CYFD may designate a facility level medical director, who may be an appropriately-licensed mid-level provider or physician, to oversee the on-site provision of medical care at one or more juvenile justice services facilities. The facility level medical director is designated to act on

behalf of the medical director in administrative matters, and in such other matters as the medical director may decide. Staff informs the facility level medical director of all hospitalizations, serious injuries, surgeries, deaths, serious suicide attempts, medication error, serious accidents, serious sudden illness, failure to follow medical procedures, failure to implement medical care orders, and any use of force, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

B. ~~Mental~~ Behavioral health director at department level, juvenile justice services level, and facility level

(1) CYFD designates an appropriately-licensed department ~~mental~~ behavioral health director to oversee the provision of ~~mental~~ behavioral health care to all CYFD's clients, including the provision of ~~mental~~ behavioral health services at juvenile justice services facilities.

(a) The department level ~~mental~~ behavioral health director is CYFD's final authority on ~~mental~~ behavioral health matters.

(b) The department ~~mental~~ behavioral health director annually reviews and approves all policies and procedures relating to the provision of ~~mental~~ behavioral health care in juvenile justice services facilities.

(c) The department ~~mental~~ behavioral health director is the final decision-maker for any questions that arise regarding the application of ~~mental~~ behavioral health policies and procedures in specific circumstances.

(d) The department ~~mental~~ behavioral health director may designate other persons to act on behalf of the ~~mental~~ behavioral health director in specified circumstances.

(2) CYFD designates a ~~mental~~ behavioral health director for juvenile justice services, who may also be the department level ~~mental~~ behavioral health director, and who is responsible for overseeing ~~mental~~ behavioral health care delivery within juvenile justice services. The juvenile justice services level ~~mental~~ behavioral health director may be an appropriately-licensed psychiatrist or psychologist, or social worker. The facilities inform the juvenile justice services level ~~mental~~ behavioral health director of all hospitalizations, serious injuries, surgeries, deaths, suicide attempts, medication error, accidents, sudden illness, failure to follow procedures, and failure to implement care orders, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

(3) CYFD may designate a facility level ~~mental~~ behavioral health director, who may be an appropriately-licensed

physician (including psychiatrist), psychologist, or social worker, to oversee the on-site provision of [mental] behavioral health care at one or more juvenile justice services facilities. The facility level [mental] behavioral health director is designated to act on behalf of the [mental] behavioral health director in administrative matters, and in such other matters as the [mental] behavioral health director may decide. Staff informs the facility level [mental] behavioral health director of all hospitalizations, serious injuries, surgeries, deaths, serious suicide attempts, medication error, serious accidents, serious sudden illness, failure to follow medical procedures, failure to implement medical care orders, and any use of force, as promptly as circumstances warrant, and in any event no later than the start of the next work day.

[8.14.4.8 NMAC - Rp, 8 NMAC 14.4.8, 8/31/2004; A, 12/30/2005]

8.14.4.9 15-DAY DIAGNOSTIC EVALUATION:

A. Clients who are committed to undergo a 15-day diagnostic evaluation, pursuant to Section 32A-2-17(D) of the Delinquency Act, report to YDDC where the evaluation is conducted.

B. The 15-day diagnostic evaluation process includes review of client history and previous evaluations, interviews with clients and others close to the case, substance abuse screening, psychopathology screening, and other screening appropriate to the client.

C. [Mental] Behavioral health staff arrange for any crisis intervention that is needed during the 15-day stay, including on-site and off-site [mental] behavioral health care.

D. The 15-day diagnostic evaluation report is prepared and provided to the court.

[8.14.4.9 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.10 INTAKE MEDICAL SCREENING: Clients undergo medical screening when they first enter CYFD juvenile justice custody.

A. Clients who are committed to the custody of CYFD pursuant to the Delinquency Act, including clients committed for a 15-day diagnostic evaluation, are initially assigned to YDDC. Upon arrival at YDDC, clients (including 15-day diagnostic evaluation clients), undergo a multi-level medical screening.

(1) Staff screening at YDDC. Upon arrival and prior to the client's admission to the general population, the client is first interviewed by (non-medical) staff who document medical history.

(2) Medical staff screening at

YDDC. Within 72 hours of the client's arrival at YDDC, medical staff screen the client to determine needs for medical care.

(3) Mid-level provider or physician screening at YDDC. Within 14 days of arrival at YDDC, the client receives a physical examination from a mid-level provider or physician who may also collect specimens and order laboratory tests.

B. A small number of clients who have pre-identified medical and/or [mental] behavioral health needs, are not initially placed at YDDC, but are instead placed at a [DCRC] reintegration center as a court-ordered condition of probation. [DCRC] Reintegration clients undergo medical intake screening similar to that provided to clients at YDDC, except that the medical staff and mid-level provider or physician screening are performed by contract providers at an off-site location, within 72 hours of the client's admission.

[8.14.4.10 NMAC - Rp, 8 NMAC 14.4.12, 8/31/2004; A, 12/30/2005]

8.14.4.12 INTAKE [MENTAL] BEHAVIORAL HEALTH SCREENING (CENTRAL INTAKE):

A. Clients undergo [mental] behavioral health screening and classification when they first enter YDDC on a one-year, or longer, commitment. Clients are housed in a separate living unit while they undergo the intake screening process. The goal of the classification process is to determine appropriate assignment and treatment for the client.

B. Upon arrival, intake clients complete a screening instrument to determine whether they are appropriate for admission to the general population, or instead require immediate on-site or off-site [mental] behavioral health care.

C. Within 2 business days of arrival, [mental] behavioral health staff meet with the client to begin [mental] behavioral health evaluation and identify immediate [mental] behavioral health needs. [Mental] Behavioral health staff's evaluation includes clinical interviews and administration of [mental] behavioral health and substance abuse screening tools.

D. Approximately 14 days after the client's arrival, [mental] behavioral health staff and other staff involved in the classification process meet to recommend appropriate placement for the client. The client's input is considered.

E. The client is transferred to the assigned facility as soon as practicable.

[8.14.4.12 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.13 POST-INTAKE

[MENTAL] BEHAVIORAL HEALTH CARE:

A. [Mental] Behavioral health services are available, provided to clients, and any treatment is documented.

B. Core programming begins during the intake process.

C. During orientation, clients are instructed how to request counseling and [mental] behavioral health care.

D. There is a written suicide prevention plan and intervention program which is reviewed and approved by a qualified medical or [mental] behavioral health professional. Staff are trained in the implementation of the plan.

E. Mentally disordered and developmentally disabled clients are screened, treated, and referred for services as indicated.

[8.14.4.13 NMAC - Rp, 8 NMAC 14.4.10, 8/31/2004; A, 12/30/2005]

8.14.4.14 MEDICAL AND [MENTAL] BEHAVIORAL HEALTH ORDERS AND COMMUNITY REFERRALS:

Clients are provided with medical and [mental] behavioral health care that is indicated. Staff, medical staff, and [mental] behavioral health staff provide care at the facilities according to the orders written for the client. Whenever necessary, clients are treated by community care providers, such as an obstetrician/gynecologist or hospital. Mid-level providers and physicians order medical and [mental] behavioral health care. Clinical and [mental] behavioral health workers, including social workers, may also enter orders for [mental] behavioral health care. Any questions about appropriate care in individual cases, are referred to the medical and/or [mental] behavioral health director.

[8.14.4.14 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.18 24-HOUR EMERGENCY MEDICAL AND [MENTAL] BEHAVIORAL HEALTH CARE PLAN:

Each facility has a written plan, approved by the medical and [mental] behavioral health director, for providing 24-hour emergency medical, dental and [mental] behavioral health care to clients. The written plan includes:

A. on-site emergency first aid and crisis intervention;

B. emergency evacuation of clients from the facility;

C. use of an emergency medical vehicle;

D. use of one or more designated hospital emergency rooms or other appropriate health facilities;

E. emergency on-call and/or on-site medical and [mental] behav-

ioral health staff professional services;

F. security procedures for the immediate transfer of clients when medically necessary.

[8.14.4.18 NMAC - Rp, 8 NMAC 14.4.9.4, 8/31/2004; A, 12/30/2005]

8.14.4.20 BEHAVIOR MANAGEMENT AND CRISIS INTERVENTION:

A. ~~CYFD seeks to manage clients in safety sensitive situations, based on principles of behavior management. Staff, including medical staff and mental health staff, are trained to systematically analyze threatening circumstances that have potential for resulting in injury including death, and to systematically apply a continuum of behavior management techniques. Behavior management principles include applying the least restrictive means appropriate to control the situation, and de-escalation. Restraints are applied conservatively and according to approved procedure.~~

B. ~~Crisis intervention includes appropriate measures to prevent self harm, where indicated.~~

C. ~~All uses of physical intervention or restraint are reported to the facility superintendent no later than the end of the work shift, and are reported to the juvenile justice services director as promptly as circumstances warrant, and in any event no later than the start of the next work day.]~~

A. Use of force is restricted to justifiable self defense, protection of others, protection of property, and prevention of escapes. The amount of force is limited to that minimally necessary to control the situation.

B. Force is not used as punishment.

C. Juvenile justice services protects and promotes the rights of each client, including the right to be free from physical or mental abuse, corporal punishment and any physical restraints or seclusion imposed for the purposes of discipline or convenience. Juvenile justice services prohibits in policy, procedure and practice.

(1) Corporal punishment is not permitted for any client in juvenile justice services custody.

(2) Staff are prohibited from using techniques of physical restraints that unduly risk serious harm or needless pain to the client. These techniques include:

(a) restricting respiration in any way, such as applying a chokehold or pressure to a client's back or chest or placing the client in a position that is capable of causing asphyxia;

(b) using any method that is capable of causing loss of consciousness or harm to the neck;

(c) pinning down with knees to

torso, head and/or neck;

(d) slapping, punching, kicking or hitting;

(e) using pressure point, pain compliance and joint manipulation techniques, other than the department's approved method for release of a chokehold, bite or hair pull;

(f) modifying restraint equipment or applying any cuffing technique that connects handcuffs behind the back to ankle restraints;

(g) dragging or lifting of the client by the hair or by any type of mechanical restraints;

(h) using other clients or untrained staff to assist with the restraint;

(i) securing a client to another client or to a fixed object;

(j) administering a drug for controlling acute episodic behavior as a means of physical restraint, except when the client's behavior is attributable to mental illness and the drug is authorized by a licensed physician and administered by a licensed medical professional;

(3) degrading punishment or personal abuse;

(4) group punishment for one individual's behavior;

(5) punitive work assignments;

(6) isolation or seclusion, except as appropriate in special circumstances for client safety and only for a limited time as specified in procedures;

(7) chemical/aerosol restraints, except as used by certified law enforcement officers in the performance of their duties; and

(8) mechanical restraints, except as stated in this policy.

D. Staff are prohibited from using medical care, religious programming, education, recreation and client communication with parents, guardians or legal counsel as a reward or punishment for conduct.

E. Juvenile justice services establish and follow policies and procedures governing the use of behavior management practices including therapeutic holds, physical restraints and seclusion. This includes documentation of each therapeutic hold, physical restraint and seclusion in the client's casework file and FACTS.

F. For those behavior management practices that are allowed for above, juvenile justice services supports their limited and justified use through:

(1) staff orientation and education that create a culture emphasizing prevention of the need for therapeutics holds, physical restraint and seclusion and their appropriate use;

(2) assessment processes, including but not limited to videotaping the event, identifying and preventing potential behav-

ioral risk factors; and

(3) the development and promotion of preventative strategies and use of less restrictive alternatives.

G. On an annual basis, juvenile justice services staff who has contact with clients and families must attend department approved conflict management, verbal de-escalation and personal safety courses.

H. Juvenile justice services facility staff use only agency approved and trained physical restraint techniques that include but are not limited to department approved methods of manual and mechanical restraints.

I. Juvenile justice services staff, field and facility, may not carry or store chemical agents or any physical restraint device or equipment.

J. Use of restraint equipment in juvenile justice services facilities that constitutes routine uses, i.e., transporting a client, is not considered as use of force unless authorized force was required to apply the restraints.

K. JJS staff are trained on the use of mechanical restraints prior to receiving authorization from the chief JPPO/superintendent/designee to use the department restraints. Staff only use department issued items. Staff whose training is not current (more than one year) is not allowed to use mechanical restraints.

L. Staff complete a written report, using department approved form, when force is used. The form is to be completed prior to the end of shift and submits the form prior to leaving the premises to the superintendent who reviews each form for completeness, accuracy, timeliness, compliance to JJS policies and procedures and signs the forms. The superintendent immediately forwards a copy of the form within to the designated deputy secretary and deputy director for facilities and director of communications. The superintendent reviews each form for completeness, accuracy, and policy compliance and signs the forms.

M. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipts and understanding and that these signed forms are part of the of the employee's personnel file [8.14.4.20 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.21 TREATMENT PROGRAMS:

A. Substance abuse and chemical dependency

(1) Detoxification from alcohol, opiates, barbiturates and other drugs with adverse or health threatening after-effects is

managed under medical supervision. Detoxification is provided off-site for any clients who requires it.

(2) The responsible medical and/or ~~mental~~ behavioral health director approves methods for diagnosis, development of treatment plans, and monitoring for chemically dependent clients and other alcohol/drug abusers.

(3) Facilities have a written plan which provides for the clinical management of chemically dependent clients.

(4) All clients receive substance abuse education and individualized treatment as needed.

B. Instructions and assistance in personal hygiene, grooming and health care are provided to clients.

C. Clients are provided with family planning and health education services.

[8.14.4.21 NMAC - Rp, 8 NMAC 14.4.15, 8/31/2004; A, 12/30/2005]

8.14.4.22 HOSPITALIZATION: Hospitalization is provided when necessary for medical and/or ~~mental~~ behavioral health. Clients are accompanied to the hospital by a staff member. Staff remains with the client for as long as a security need exists.

[8.14.4.22 NMAC - Rp, 8 NMAC 14.9.3, 8/31/2004; A, 12/30/2005]

8.14.4.24 RESEARCH AND PROCEDURES NOT YET APPROVED FOR GENERAL USE: CYFD does not permit medical, ~~mental~~ behavioral health, pharmaceutical or cosmetic research on facility clients. With approval of the ~~juvenile justice services director~~ designated deputy secretary, the medical and/or ~~mental~~ behavioral health director, office of general counsel, and the HIPAA privacy officer, data collection and analysis for research purposes may be permitted if the research confidentiality protections are in place. If an individual client's medical or ~~mental~~ behavioral health situation is such that a therapy or treatment not yet approved for general use, may appear appropriate for the client, a request to approve the use of the therapy or treatment for the client is submitted to the medical and/or ~~mental~~ behavioral health director and ~~juvenile justice services director~~ designated deputy secretary; the child's parent/guardian must also agree to the therapy or treatment.

[8.14.4.24 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.25 CLIENT AND FAMILY PARTICIPATION; REFUSAL OF CARE:

A. Medical and ~~mental~~

behavioral health staff encourage client and family participation in medical and ~~mental~~ behavioral health care, as indicated.

B. Medical and ~~mental~~ behavioral health staff inform clients and participating family members of treatment options, risks, consequences, and patient rights. Whenever possible, consent to treatment is obtained and documented. In circumstances including a life-threatening situation, potentially permanently disabling condition, or impaired judgment rendering informed decision-making impossible, medical and/or ~~mental~~ behavioral health care is provided based on implied consent. Clients who participate and cooperate with recommended treatment are presumed to have consented to treatment regardless whether consent has been documented.

C. Whenever treatment is provided without documented consent, the reasons for providing the treatment are documented. However, consent is not required to perform an HIV test in accordance with NMSA 1978 Section 24-2B-2, and to administer medications.

D. Clients and/or parents/guardians who refuse medical or ~~mental~~ behavioral health care are requested to provide written acknowledgment of refusal.

E. When a client or the parent/guardian refuses treatment in a situation where consent is not implied, the superintendent/designee is notified. The medical or ~~mental~~ behavioral health staff provides the superintendent/designee with details of the client's condition, the proposed treatment, and the potential risks of not rendering care. The superintendent/designee contacts the ~~director~~ designated deputy secretary, who in turn contacts the secretary and the office of general counsel to determine the need to pursue court action to request a treatment guardian who will make a treatment decision based on medical case information. A court-appointed treatment guardian may provide consent for the treatment.

F. For facility clients who are at least 18 years old, the parent/guardian may not decide for the client whether to accept or refuse treatment, unless the client is mentally incapable.

G. For facility clients who are under age 18, medical practitioners follow specific statutory provisions or accepted practice guidelines for the age at which children may consent to specific medical or ~~mental~~ behavioral health treatments.

[8.14.4.25 NMAC - Rp, 8 NMAC 14.9.2, 8/31/2004; A, 12/30/2005]

8.14.4.26 NOTIFICATION: The facility notifies the client's parent/guardian of client illnesses, injuries, and other medical or ~~mental~~ behavioral

health events that are serious enough to disrupt the client's daily activities. The facility also provides information as to treatment and progress.

[8.14.4.26 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.27 INCIDENT REPORTING AND REVIEW: ~~Certain medical and/or mental health related events occurring at juvenile justice services facilities are reported to the juvenile justice services director, including suicide attempts, use of force for behavior management, use of chemical restraints, and sudden illness or injury requiring medical or EMS attention. Any event which medical/mental health staff believes to warrant review, is reported to the juvenile justice services director. Reports are made as promptly as circumstances warrant, and in any event no later than the start of the next work day.~~

A. Certain medical and/or behavioral health-related events occurring at juvenile justice services facilities are reported to the designated deputy secretary, including suicide attempts, use of force for behavior management, use of chemical restraints, and sudden illness or injury requiring medical or EMS attention.

B. Any event which medical/behavioral health staff believes to warrant review, is reported to the designated deputy secretary. Reports are made as promptly as circumstances warrant, and in any event no later than the start of the next work day.

C. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipts and understanding and that these signed forms are part of the of the employee's personnel file. [8.14.4.27 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.28 CLIENT TRANSFERS AND CONTINUITY OF CARE: When a client is transferred to another facility, the medical and ~~mental~~ behavioral health record is also sent with the client in a secure container. Arrangements are made between the sending and receiving facility to provide for continuity of care and updated screening.

[8.14.4.28 NMAC - Rp, 8 NMAC 14.4.12.5, 8/31/2004; A, 12/30/2005]

8.14.4.30 PRIVATE INSURANCE COVERAGE: For clients who are covered by private medical and/or ~~mental~~ behavioral health insurance, medical and ~~mental~~ behavioral health staff arrange for the insurance carrier to pay for covered services rendered while the client is in the

custody of CYFD.

[8.14.4.30 NMAC - N, 8/31/2004; A, 12/30/2005]

8.14.4.31 RESPONSE TO PERSON HANGING:

A. A JJS facility staff member finding another person hanging by the neck places the highest priority on preserving the victim's life.

B. Each facility superintendent ensures that this policy and attendant procedure are:

(1) included with appropriate post orders as a permanent part of those post orders;

(2) included in the orientation training course for new staff and in training courses on life safety; and

(3) verifies a life safety kit is available and includes life safety scissors in all living units.

C. Each facility superintendent is responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called acknowledgement of receipt and understanding and that these signed forms are part of the of the employee's personnel file.
[8.14.4.31 NMAC - N, 12/30/2005]

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

This is an amendment to 2.61.4 NMAC, sections 7, 8 & 9, effective 1/1/06. This rule was also renumbered and reformatted to comply with current NMAC requirements.

2.61.4.7 DEFINITIONS:

A. "Allocation" means an allocation of the state ceiling issued by the board to an issuing authority to issue private activity bonds.

B. "Board" means the state board of finance.

C. "Bond counsel" means an attorney or a firm of attorneys listed in the most recently available "directory of municipal bond dealers of the United States", published by the bond buyer and commonly known as the "red book", in the section listing municipal bond attorneys of the United States or the successor publication thereto.

D. "Issuing authority" means the state, state agencies, counties and incorporated municipalities.

E. "Mortgage credit certificate election" means an election pursuant to Section 25(c)(2)(A)(ii) of the code, by an

issuing authority not to issue qualified mortgage bonds which the issuing authority is otherwise authorized to issue, in exchange for the authority under Section 25 of the code to issue mortgage credit certificates in connection with a qualified mortgage credit certificate within the meaning of Section 25(c)(2) of the code.

F. "Private activity bond" means any bond or other obligation which is a qualified bond under Section 141 of the code which is not excluded by Section 146(g),(h) and (i) of the code, or a bond or other obligation issued under Section 1312 or 1313 of the Tax Reform Act of 1986; and the private activity portion of government use bonds allocated by an issuing authority to an issue under Section 141(b)(5) of the code.

G. "State agency" means the New Mexico [~~industrial and agricultural~~] finance authority, the New Mexico educational assistance foundation, the New Mexico mortgage finance authority and any other agency, authority, instrumentality, corporation or body, now existing or hereafter created, which under state law can issue private activity bonds on behalf of the state.

H. "State ceiling" means, for any calendar year, the [~~greater of an amount equal to fifty dollars (\$50.00) multiplied by the state population as shown by the most recent census estimate of the resident population of the state released by the United States bureau of census before the beginning of such calendar year, or one hundred fifty million dollars (\$150,000,000) or such different~~] amount as [~~may be~~] provided by Section 146(d) of the code.

[2/29/96; 11/29/97; 2.61.4.7 NMAC - Rn & A, 2 NMAC 61.4.7, 01/01/06]

2.61.4.8 DISTRIBUTION OF PRIVATE ACTIVITY BOND ALLOCATIONS:

A. Capitalized terms.

(1) Single family housing purpose bonds shall mean private activity bonds issued pursuant to Section 143 of the code or mortgage credit certificates issued pursuant to Section 25(c)(2) of the code.

(2) Multifamily housing purpose bonds shall mean private activity bonds issued pursuant to Section 142(a)(7) of the code.

(3) Housing purpose bonds shall mean single family housing purpose bonds and multifamily housing purpose bonds.

(4) Education purpose bonds shall mean private activity bonds issued pursuant to Section 144(b) of the code.

(5) Small issue economic development purpose bonds shall mean private activity bonds issued pursuant to Section 144(a) of the code.

(6) Exempt facility purpose bonds shall mean private activity bonds requiring an allocation of the state ceiling under the code other than education purpose bonds, housing purpose bonds and small issue economic development purpose bonds.

(7) Other purpose bonds shall mean small issue economic development purpose bonds and exempt facility purpose bonds.

(8) Single family housing purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for single family housing purpose bonds.

(9) Multifamily housing purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for multifamily housing purpose bonds.

(10) Education purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for education purpose bonds.

(11) Other purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for other purpose bonds.

(12) Single family housing purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the single family housing purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to single family housing purpose bonds.

(13) Multifamily housing purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the multifamily housing purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to multifamily housing purpose bonds.

(14) Education purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the education purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to

allocate for carryforward purposes relating to education purpose bonds.

(15) Other purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the other purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to other purpose bonds.

(16) Allocation percentage means single family housing purpose allocation percentage, multifamily housing purpose allocation percentage, education purpose allocation percentage and other purpose allocation percentage, respectively.

(17) Carryforward allocation percentage means single family housing purpose carryforward allocation percentage, multifamily housing purpose carryforward allocation percentage, housing purpose carryforward allocation percentage, education purpose carryforward allocation percentage and other purpose carryforward allocation percentage, respectively.

B. Issuing authorities requesting at any time during the year distributions of allocations or carryforward election allocations shall submit the following ~~information~~.

(1) For all requests:

(a) a letter from the issuing authority setting forth the amount of the state ceiling requested, the actual or expected date of adoption of the bond resolution or similar documentation by the issuing authority, the expected date of the sale of the bonds, the expected date of closing of the bonds, a statement of any significant conditions that need to be satisfied before the bonds can be issued, and a statement categorizing the private activity bonds as education purpose bonds, single family housing purpose bonds, multifamily housing purpose bonds, small issue economic development purpose bonds or exempt facility purpose bonds, in accordance with the definitions contained in this part, which categorization is subject to board review and recategorization, if appropriate;

(b) a letter from bond counsel for the issuing authority or the user, with supporting citations to state statutes, stating that the private activity bonds can validly be issued under state law by the issuing authority, which the board may refer to its bond counsel or to the state's attorney general for review and comment; if the board is advised by its bond counsel or the attorney general that the opinion of the issuing authority's bond counsel is incorrect, the board may refuse to issue the allocation requested;

(c) a letter from bond counsel for

the issuing authority or the user, with supporting citations to the code and the regulations, stating that the bonds are private activity bonds requiring an allocation of the state ceiling; and

(d) a letter from the issuing authority or the user stating why the public purpose to be served by the issuance of the private activity bonds could not be as economically or effectively served by a means not involving an allocation of the state ceiling;

(e) any fees required by Section 2.61.4.9 NMAC.

(2) For all requests not involving a project, i.e., for single family housing purpose bonds and education purpose bonds, a letter from the issuing authority setting forth the following:

(a) a general description of the location of the proposed borrowers;

(b) experience of the issuing authority in utilizing allocations of the state ceiling.

(3) For all requests involving a project, a letter from the issuing authority or the user including the following:

(a) a copy of the inducement resolution, certified by an official of the issuing authority;

(b) a description of the user, the project and the project's specific location;

(c) the estimated number and types of jobs, both construction and permanent, indicating which are expected to be filled by persons who are residents of the state at the time of submission of the request for allocation and which are expected to be filled by persons who are non-residents at the time of submission of the request for allocation; and a representation that the issuing authority, if it receives an allocation of the state ceiling for the project and issues the related bonds, will provide to the board annually, ~~[while the private activity bonds are outstanding,]~~ for four (4) years following the issuance of the bonds, on or before June 1, and after that period upon request of the board, employment reports on a form prescribed by the board setting forth in reasonable detail the numbers and types of workers, and their residency, employed at the project on a full-time equivalent basis during the preceding 12 month period;

(d) the present use or conditions of the project site and that the proposed user of the project has obtained a legally enforceable right to acquire the project site; evidence of approved zoning of the proposed site must be submitted; this requires that project types for which the cap is being requested are not prohibited by the existing zoning of the proposed site;

(e) the maximum amount of the private activity bonds and other obligations to be issued;

(f) a proposed starting date and estimated completion date of the construction of the project, if applicable;

(g) information relating to the feasibility of the proposed project showing that the project or the user will generate revenues and cash flow sufficient to make payments to pay debt service on the bonds, if applicable;

(h) the amount and source of private capital which will be used for the project in addition to bond financing, as well as a brief table showing estimated sources and uses of funds;

(i) conceptual site plans for the project and a map locating the project area;

(j) in the case of multifamily housing purpose bonds, an explanation of why the housing needs of individuals whose income will make them eligible under Section 142(d) of the code are not being met by existing multifamily housing; information as to the number and percentage of units set aside for households at various income levels or with special needs; the legal mechanisms to monitor and enforce compliance with the set-aside provisions and the experience of the monitoring entity with respect to similar projects; a representation that the issuing authority, if it receives an allocation of the state ceiling for the project and issues the related bonds, will provide to the board annually, ~~[while the private activity bonds are outstanding,]~~ for four (4) years following the issuance of the bonds, on or before June 1, and after that period upon request of the board, occupancy reports on a form prescribed by the board setting forth in reasonable detail information as to the occupancy of the rental units by category of household; and the duration of the set-aside provisions;

(k) any other information regarding the economic benefits to the project's community and to the state or which the user believes will aid the board in considering the request for allocation; and

(l) a commitment letter or letter of intent, which may be subject to common contingencies or closing conditions, from the proposed underwriter, placement agent or bond purchaser to underwrite, place or purchase the bonds.

(4) For all requests for an allocation for single family housing purpose bonds where the issuing authority seeks an allocation to be used by the issuing authority for mortgage credit certificates or, in its discretion, for either qualified mortgage bonds or mortgage credit certificates, a letter from the issuing authority stating that a qualified mortgage credit certificate program has been adopted by the issuing authority and a description of how the issuing authority is proposing to use the mortgage credit certificates.

(5) For all requests for an allocation for multifamily housing purpose bonds, the board may condition any allocation on the agreement, on behalf of the issuer or the user of the project, to set aside a specified minimum number of units for households at certain income levels or with special needs.

(6) The board or its staff may ask for additional supplemental information from the issuing authority to aid the board in considering the request, including information as to the readiness of the issuer to issue the private activity bonds.

C. Within seven business days after an issuing authority issues any private activity bonds or makes a mortgage credit certificate election, the issuing authority or, in the case of a project, bond counsel for the issuing authority or the user, shall advise the board by letter of the date the bonds were issued and the total aggregate amount of the issue, or in the case of a mortgage credit certificate election, the date and the amount of the election, referencing in that letter how the applicable allocations and carryforward allocations issued by the board were used for that issue.

D. The authority of the board to issue, on behalf of the governor (as provided in Section 6-20-11 NMSA 1978), the certification required by the code or the regulations, is hereby delegated to the director of the board. The board interprets its authority to issue the certification, on behalf of the governor, as permissive, and not in substitution of the authority of the governor to issue the certification, on the governor's own behalf.

E. The board shall establish the bond issuance expiration date, pursuant to Section 6-20-2A(5) NMSA 1978, on or before the regularly scheduled meeting of the board in November of that year, except as otherwise provided in Paragraph (2) of Subsection K of 2.61.4.8 NMAC.

F. Issuing authorities shall comply with the following restrictions:

(1) Any issuing authority desiring to make a request to the board for an allocation or a carryforward election allocation must comply with established board rules for inclusion on the board's agenda. In order to be considered for inclusion on the agenda, all materials required to be submitted to the board must be submitted by the established time period prior to the meeting date. The board publishes to interested parties notice of the deadline for submission of complete materials prior to each meeting. It is an issuing authority's responsibility to ascertain that deadline and comply with it. All requests for allocations of the state ceiling appearing on the board's agenda for a particular meeting will be deemed to have been received simultaneously.

(2) An issuing authority or the user shall advise the board in writing of any

unusable allocation of the state ceiling promptly after it becomes aware the allocation will not be used in full prior to the allocation expiration date. After being advised of a return of an allocation of the state ceiling, the board shall make an announcement of the amount of the return at its next board meeting. The board shall not consider any requests for allocation of the state ceiling relating to the amount of any returned allocation until the meeting following the announcement of the return. The board may waive this waiting-period requirement for returns of allocations on or after November 1 of any calendar year.

(3) The board will not consider a request for a new allocation of the state ceiling for a project whose previous allocation has expired or was voluntarily returned until the issuing authority has resubmitted all of the information required by Subsection B of 2.61.4.8 NMAC. Such request for a new allocation will not be given a priority over other requests for allocations.

G. The board may require annually, to be presented at the board's regularly scheduled meeting in November, a report from state agencies issuing housing purpose bonds or education purpose bonds of the projected need of those state agencies for allocations of the state ceiling for the remainder of the calendar year and the next three calendar years.

H. At any time during a calendar year, the board may revise current year allocation percentages and carryforward allocation percentages.

I. Whenever the board has on its agenda requests for allocations exceeding the remaining applicable amount of an allocation percentage or carryforward allocation percentage, the board will prioritize requests, as applicable:

(1) by giving preference to small issue economic development purpose bonds over exempt facility purpose bonds;

(2) with respect to small issue economic development purpose bonds, by considering factors such as employment, geographic location, nature and number of jobs created for residents and non-residents, nature of the industry, and economic benefits to the community and the state;

(3) with respect to multifamily housing purpose bonds, by considering factors such as percentage of units devoted to persons of low income, services to special needs groups, percentage of financing provided by equity and other financing not requiring an allocation, geographic location, and the experience of the agency charged with monitoring compliance with persons of low income requirements;

(4) with respect to single family housing purpose bonds, by considering factors such as targeting to persons of low income, geographic location, and experi-

ence of the issuing authority in utilizing allocations of the state ceiling;

(5) with respect to exempt facility bonds, by considering factors such as employment, geographic location, nature of jobs created, nature of the industry, and economic benefits to the community and the state; and

(6) with respect to education purpose bonds, by considering the geographic location of the prospective borrowers.

J. Pre-July 1 allocations:

(1) The act provides, in Section 6-20-3A and B NMSA 1978, that until July 1 in any calendar year, the state ceiling for the calendar year shall be allocated forty percent to state agencies as a group and sixty percent to issuing authorities, as a group, that are not state agencies; provided, however, that such allocation shall be made in accordance with directives, rules or regulations governing the distribution of allocations to be established by the board. This part is such a directive, rule or regulation of the board.

(2) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3A NMSA 1978 are directed to be utilized so that no single state agency may issue more than fifty percent of the allocation to state agencies as a group, except that the board may exceed that amount if the board determines it is not aware of any planned or pending requests for allocations by any state agency prior to July 1 of any year that could not be approved as a result of granting an allocation of more than fifty percent.

(3) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3B NMSA 1978 are directed to be utilized so that no single issuing authority that is not a state agency may issue more than twenty percent of the allocation to issuing authorities that are not state agencies as a group, except that the board may exceed that amount if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority, which is not a state agency, prior to July 1 of any year that could not be approved as a result of granting an allocation of more than twenty percent.

(4) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Sections 6-20-3A and 3B NMSA 1978 are directed to be utilized so that no more than the single family housing purpose allocation percentage of the state ceiling may be allocated to single family housing purpose bonds, no more than the multifamily housing purpose allocation percentage of the state ceiling may be allocated to multifamily housing purpose bonds, no more than the education purpose allocation percentage of the state ceiling

may be allocated to education purpose bonds and no more than the other purpose allocation percentage of the state ceiling may be allocated to other purpose bonds except that the board may exceed an allocation percentage if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority that could not be approved as a result of granting an allocation in excess of the applicable allocation percentage.

(5) The allocation expiration date for any allocation issued by the board prior to July 1 in any calendar year shall be July 1, subject to automatic and discretionary extension pursuant to Section 6-20-10 NMSA 1978, but any discretionary extension granted by the board will be for 30 days or less and the board may condition the discretionary extension on the completion of both a sale and issuance of the private activity bonds within the extension period.

K. Allocations on or after July 1 until November 1:

(1) On or after July 1 until November 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3D are directed to be utilized so that, after taking into account any allocations still outstanding for or previously used by any issuing authority in that calendar year, no more than the education purpose allocation percentage of the state ceiling may be allocated to education purpose bonds, no more than the single family housing purpose allocation percentage of the state ceiling may be allocated to single family housing purpose bonds, no more than the multifamily housing purpose allocation percentage of the state ceiling may be allocated to multifamily housing purpose bonds, and no more than the other purpose allocation percentage of the state ceiling may be allocated to other purpose bonds except that the board may exceed an allocation percentage if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority prior to November 1 of any year that could not be approved as a result of granting an allocation in excess of the applicable allocation percentage.

(2) The allocation expiration date for any allocation issued by the board on or after July 1 and prior to November 1 of any calendar year shall be the earlier of 120 days from the date of issuance by the board of the allocation or the date of the board's regularly scheduled meeting in December of that year, subject to automatic or discretionary extension pursuant to Section 6-20-10 NMSA 1978, but any discretionary extension granted by the board will be for 30 days or less and the board may condition the discretionary extension on the completion of both a sale and issuance of the pri-

ate activity bonds within the extension period. For purposes of this part, the board hereby establishes the date of the board's regularly scheduled meeting in December, as that date may be set by the board annually, as the bond issuance expiration date for private activity bonds that receive an allocation on or after July 1 and prior to November 1.

L. Allocations on or after November 1:

(1) On or after November 1 of any calendar year, no allocations of the state ceiling will be made by the board, unless the board in its discretion deems it advisable. In determining whether it may be advisable, the board may consider, among other factors, the ability of the issuing authority seeking the allocation to issue the private activity bonds prior to the bond issuance expiration date and whether the allocation will further the board's policy to share the state ceiling among single family housing purpose bonds, multifamily housing purpose bonds, education purpose bonds and other purpose bonds in accordance with their respective allocation percentages.

(2) The allocation expiration date for any allocation issued by the board on or after November 1 of any calendar year shall be the bond issuance expiration date established by the board annually pursuant to Subsection E of 2.61.4.8 NMAC.

M. Carryforward election allocations:

(1) Requests for carryforward election allocations may be made by any issuing authority for any carryforward purpose to the board at its regularly scheduled meeting in December of the calendar year, and shall be accompanied by any fees that may be required pursuant to Section 2.61.4.9 NMAC.

(2) If and to the extent requested by issuing authorities, carryforward election allocations of the state ceiling made pursuant to Section 6-20-7 NMSA 1978 are directed to be utilized so that of the balance of any state ceiling remaining unused after the bond issuance expiration date no more than the single family housing purpose carryforward allocation percentage will be allocated to single family housing purpose bonds, no more than the multifamily housing purpose carryforward allocation percentage will be allocated to multifamily housing purpose bonds, no more than the education purpose carryforward allocation percentage will be allocated to education purpose bonds and no more than the other purpose carryforward allocation percentage will be allocated to exempt facility purpose bonds. In determining the carryforward election allocation among housing purpose bonds, the board may give first preference

to qualified mortgage bonds, next preference to issuances of mortgage credit certificates and final preference to multifamily housing purpose bonds. The board may also take into account, if in its discretion it so determines, allocations used in that calendar year for housing purpose bonds, education purpose bonds and exempt facility bonds. If the board does not receive sufficient carryforward election allocation requests for any category of carryforward purpose such that issuing authorities have not requested at least the applicable carryforward allocation percentage of the balance of the state ceiling, the board may in its discretion determine, to the extent requested by issuing authorities, to exceed the applicable carryforward allocation percentage for any category of carryforward purpose.

[2/29/96; 11/30/96; 11/29/97; 2.61.4.8 NMAC - Rn & A, 2 NMAC 61.4.8, 01/01/06]

2.61.4.9 PRIVATE ACTIVITY

BOND FEES CHARGED: The act provides, in Section 6-20-11C NMSA 1978, that the board may require a reasonable application fee, allocation deposit and extension fee to be paid by the issuing authority. Application and extension fees collected by the board shall be deposited in the general fund. Allocation fees shall be deposited into a suspense account and after a determination has been made that the allocation has been used for the intended purpose, the board can direct the staff to refund in whole or in part the applicant without interest. Otherwise, the allocation deposit shall be deposited in the general fund.

A. All fees shall be paid by bank cashier's check, certified check, money order, or by wire transfer in US funds.

B. An issuing authority will be required to pay an application fee, an allocation fee, and an extension fee. The board shall charge the following fees:

(1) application for allocations valued at \$15,000,000.00 or less: \$750.00

(2) application for allocations valued at an amount greater than \$15,000,000.00 and up to \$30,000,000.00: \$1,500.00

(3) application for allocations valued at an amount greater than \$30,000,000.00: \$3,000.00

(4) allocation fee: \$250.00 per million allocated

(5) extension fee: \$750.00 if approved

C. Application fees are due on the request deadline date; Allocation fees are due 7 business days following board approval of the allocation; and extension fees are due upon extension request to the board. If required fees are not paid with-

in the time specified, the allocation will become void.

[2.61.4.9 NMAC - N, 01/01/06]

NEW MEXICO DEPARTMENT OF HEALTH

7 NMAC 27.6, Emergency Medical Services Advance Directives (filed 11/26/1996) is hereby repealed effective 01/01/06.

7.1.9 NMAC, Caregivers Criminal History Screening Requirements (filed 7/19/2002) is hereby repealed effective 01/01/06.

7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 08/30/2001) is hereby repealed effective 01/01/06.

7.27.5 NMAC, Certification of Air Ambulance (filed 08/30/2001) is hereby repealed effective 01/01/06.

NEW MEXICO DEPARTMENT OF HEALTH

TITLE 7 HEALTH CHAPTER 1 HEALTH GENERAL PROVISIONS PART 9 CAREGIVERS CRIMINAL HISTORY SCREENING REQUIREMENTS

7.1.9.1 ISSUING AGENCY: New Mexico Department of Health.

[7.1.9 1 NMAC - Rp, 7.1.9.1 NMAC, 01/01/06]

7.1.9.2 SCOPE: This rule has general applicability to all applicants, caregivers, hospital caregivers, and care providers in New Mexico as defined in Section 7.1.9.7 NMAC of this rule. This rule does not apply to caregivers as set forth in Paragraph 2 of Subsection D of 7.1.9.7 NMAC and does not apply to care providers as set forth in Paragraph 2 of Subsection E. of 7.1.9.7 NMAC.

[7.1.9 2 NMAC - Rp, 7.1.9.2 NMAC, 01/01/06]

7.1.9.3 STATUTORY AUTHORITY: Sections 29-17-2 through 29-17-5, NMSA 1978 Amended.

[7.1.9 3 NMAC - Rp, 7.1.9.3 NMAC, 01/01/06]

7.1.9.4 DURATION: Permanent.

[7.1.9 4 NMAC - Rp, 7.1.9.4 NMAC, 01/01/06]

7.1.9.5 EFFECTIVE DATE: 01/01/06, unless a later date is cited at the end of a section.

[7.1.9 5 NMAC - Rp, 7.1.9.5 NMAC, 01/01/06]

7.1.9.6 OBJECTIVE: The objective of this part of Chapter 1, General Provisions, under Title 7, Health, is to establish the requirements for complying with the Caregivers Criminal History Screening Act. Generally included within these rules are the requirements and procedures for submission of applicant, caregiver and hospital caregiver fingerprints, payment of fees and administrative reconsideration for a disqualifying conviction. These rules are intended to have all covered care providers meeting the requirements of the act.

[7.1.9 6 NMAC - Rp, 7.1.9.6 NMAC, 01/01/06]

7.1.9.7 DEFINITIONS: For purposes of this rule, the following definitions shall apply:

A. "act" means Sections 29-17-2 to 29-17-5, NMSA 1978 of the Caregivers Criminal History Screening Act;

B. "applicant" means a person who applies, and is offered employment or contractual service with a care provider to provide services as a caregiver or hospital caregiver whether as an employee or contractor;

C. "care" means the therapy, services, treatment, support, supervision, assistance with the activities of daily living or management of a care recipient;

D. "caregiver" means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that provider;

(1) "caregiver" includes:

(a) compensated persons such as employees, contractors and employees of contractors;

(b) guardianship service providers and case management entities that provide services to people with developmental disabilities; and

(c) administrators or operators of facilities who are routinely on site;

(2) "caregiver" does not include:

(a) persons who provide natural supports;

(b) independent health care professionals, licensed or medicaid certified in good standing, who are not otherwise associated with the care provider as an administrator, operator or employee, and who are involved in the treatment or management of the medical care of a care recipient such as attending or treating physicians or other

health care professionals providing consultation or ancillary services; or

(c) a person who has undergone a nationwide or statewide criminal history screening under Sections 32A-15-1 to 32A-15-4, NMSA 1978, of the Children's and Juvenile Facility Criminal Records Screening Act.

E. "care provider" includes:

(1) state owned or operated health care facilities, intermediate care facilities for the mentally retarded, general acute care hospitals, long-term care hospitals, psychiatric hospitals, rehabilitation hospitals, hospice services, guardianship providers, adult residential care facilities, adult community residential facilities, adult limited diagnostic treatment centers, case management entities providing services to persons with developmental disabilities, adult boarding homes, adult day care centers, adult family care homes, adult halfway homes, care providers operating respite, companion or personal care programs funded by the New Mexico aging and long term services department, care providers funded through the New Mexico children youth and families department providing homemaker and adult care services, disabled and elderly residential care providers providing services paid for in whole or in part by state funds, home health agencies, all residential habilitation service or respite service care providers authorized to be reimbursed in whole or in part by state funds or under any medicaid or medicaid waiver program, nursing home facilities, any other care provider entity which is licensed or medicaid certified and which is not specifically identified herein;

(2) "care provider" does not include: outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics that operate in the same manner as private physicians' offices in group practice settings, and any care facility located at or performing services exclusively for any correctional facility;

F. "care recipient" means any person under the care of a care provider who has a physical or mental illness, injury or disability or who suffers from any cognitive impairment that restricts or limits the person's activities;

G. "conditional employment" means supervised employment pursuant to a bona fide offer of employment by a care provider to an applicant, caregiver or hospital caregiver, which is contingent upon the receipt of notice from the department that the applicant's, caregiver's or hospital caregiver's nationwide and statewide criminal history screening indicates no existence

of a disqualifying conviction, or notice from the department pending an administrative reconsideration procedure under 7.1.9.10 NMAC; this includes that period of employment during the time allowed for responding to the department's request for additional information in cases where the applicant's, caregiver's or hospital caregiver's criminal history record indicates an arrest without a final disposition for a crime listed under 7.1.9.11 NMAC.

H. "consent" means the written acknowledgment of permission to conduct a nationwide or statewide criminal history screening; consent also includes, with respect to the criminal history record, permission for the department, following an attempt to obtain clarifying information from the applicant, caregiver or hospital caregiver to attribute, as a rebuttable presumption, disqualifying conviction status to any arrest for crimes that would constitute a disqualifying conviction and for which the arrest appearing on the nationwide criminal history record lacks a final disposition;

I. "department" means the New Mexico department of health, criminal history screening program;

J. "disqualifying conviction" means a plea, judgment or verdict of guilty, a plea of nolo contendere, an *Alford* plea or any plea or judgment entered in connection with a suspended sentence, in this state or from any other state or jurisdiction to a felony crime listed in 7.1.9.11 NMAC; if a conviction may be considered in or used for sentence enhancement in a subsequent proceeding, then it is a disqualifying conviction under these rules if the conviction is for a crime listed in 7.1.9.11 NMAC;

K. "hospital caregiver" means any person whose employment or contractual service with a care provider includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that care provider in an inpatient setting who is not a licensed New Mexico health care professional practicing within the scope of a profession's license;

L. "nationwide criminal history screening" means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints reviewed by the department of public safety and submitted to the federal bureau of investigation, resulting in the generation of a nationwide criminal history record for that applicant, caregiver or hospital caregiver;

M. "nationwide criminal history record" means information collected by criminal justice agencies concerning an applicant's, caregiver's or hospital caregiver's arrests, indictments or other formal criminal charges, and any dispositions arising

therefrom, including convictions, dismissals, acquittals, sentencing and correctional supervision;

N. "natural supports" means those resources, systems and persons that are readily available to the general community, including a care recipient, without regard to the care provider;

O. "routine" means in the context of care provision or financial access by an applicant, caregiver or hospital caregiver, that which is non-episodic and regularly scheduled or assigned;

P. "supervised" means, in the context of care provision or financial access, the supervisory oversight a care provider employs to ensure the prevention of abuse, neglect or the misappropriation of property of a care recipient by a caregiver or hospital caregiver during the caregiver's or hospital caregiver's conditional employment period; supervisory oversight shall include but is not limited to a management program utilized by the care provider, which demonstrates a systematic and routine monitoring of the safety and quality of service provided by the caregiver or hospital caregiver to the care recipient during the caregiver's or hospital caregiver's conditional employment period;

Q. "statewide criminal history screening" means a criminal history background investigation of an applicant, caregiver or hospital caregiver through the use of fingerprints reviewed by the department of public safety resulting in the generation of a statewide criminal history record of the applicant, caregiver or hospital caregiver;

R. "unsupervised" means, in the context of care provision or financial access, that which occurs without the on-site, visual or physical presence of another caregiver or hospital caregiver or a family member of the care recipient or of another individual representing the care provider.

[7.1.9.7 NMAC - Rp, 7.1.9.7 NMAC, 01/01/06]

7.1.9.8 CAREGIVER AND HOSPITAL CAREGIVER EMPLOYMENT REQUIREMENTS:

A. General: The responsibility for compliance with the requirements of the act applies to both the care provider and to all applicants, caregivers and hospital caregivers. All applicants for employment to whom an offer of employment is made or caregivers and hospital caregivers employed by or contracted to a care provider must consent to a nationwide and statewide criminal history screening, as described in Subsections D, E and F of this section, upon offer of employment or at the time of entering into a contractual relation-

ship with the care provider. Care providers shall submit all fees and pertinent application information for all applicants, caregivers or hospital caregivers as described in Subsections D, E and F of this section. Pursuant to Section 29-17-5 NMSA 1978 (Amended) of the act, a care provider's failure to comply is grounds for the state agency having enforcement authority with respect to the care provider] to impose appropriate administrative sanctions and penalties.

B. Exception: A caregiver or hospital caregiver applying for employment or contracting services with a care provider within twelve (12) months of the caregiver's or hospital caregiver's most recent nationwide criminal history screening which list no disqualifying convictions shall only apply for a statewide criminal history screening upon offer of employment or at the time of entering into a contractual relationship with the care provider. At the discretion of the care provider a nationwide criminal history screening, additional to the required statewide criminal history screening, may be requested.

C. Conditional Employment: Applicants, caregivers, and hospital caregivers who have submitted all completed documents and paid all applicable fees for a nationwide and statewide criminal history screening may be deemed to have conditional supervised employment pending receipt of written notice given by the department as to whether the applicant, caregiver or hospital caregiver has a disqualifying conviction.

D. Application: In order for a nationwide criminal history record to be obtained and processed, the following shall be submitted to the department on forms provided by the department.

(1) A form containing personal identification which has a photograph of the person and which meets the requirements for employment eligibility in accordance with the immigration and nationality act as amended. A reasonable xerographic copy of a drivers license photograph will suffice under Subsection D of 7.1.9.8 NMAC.

(2) A signed authorization for release of information form.

(3) Three (3) complete sets of readable fingerprint cards or other department approved media acceptable to the department of public safety and the federal bureau of investigation submitted using black ink.

(4) The fee specified by the department for the nationwide and statewide criminal history screening investigation shall not exceed seventy-four (\$74) dollars. Of which, twenty-four (\$24) dollars shall be applied for the federal bureau of investigation nationwide criminal history

screening, seven (\$7) dollars shall be applied for the statewide criminal history screening. The remaining application fee shall be applied to cover costs incurred by the department to support activities required by the act and these rules. The fees will not be applied to any other activity or expense undertaken by the department.

(5) If the applicant, caregiver or hospital caregiver must submit another readable set of fingerprint cards upon notice that the fingerprint cards previously submitted were found unreadable, as determined by the federal bureau of investigation or department of public safety, the submission of a second set of fingerprint cards is required, a separate fee will not be charged. A fee shall be charged for submission of a third and subsequent fingerprint sets.

(6) If the applicant, caregiver or hospital caregiver has a physical or medical condition which prevents the applicant, caregiver or hospital caregiver from producing readable fingerprints using commonly available fingerprinting techniques, the applicant, caregiver or hospital caregiver shall submit the fingerprint cards with a notarized affidavit signed by the applicant, caregiver, hospital caregiver, returned to the department within fourteen (14) calendar days, as determined by the postmark, which provides:

- (a) identification of the applicant, caregiver or hospital caregiver; and
- (b) an explanation of, or a statement describing, the applicant's, caregiver's or hospital caregiver's good faith efforts to supply readable fingerprints; and
- (c) the physical or medical reason that prevents the applicant, caregiver or hospital caregiver from producing readable fingerprints using commonly available fingerprinting techniques;
- (d) an applicant, caregiver or hospital caregiver meeting the conditions of this paragraph and who has resided in the state of New Mexico for less than ten (10) years must also submit a ten (10) year work history in addition to the required affidavits.

(7) All documentation submitted to the department for the purposes of criminal history screening and for the purposes set forth in 7.1.9.9 NMAC and 7.1.9.10 NMAC shall become the sole property of the department with the exception of fingerprint cards which shall be destroyed upon clearance by both the federal bureau of investigation and department of public safety. All other submitted documentation shall be retained by the department for a period of one year from the final date of closure and thereafter shall be archived.

E. Fees: The federal bureau of investigation has a mandatory processing fee with no exceptions. The department and department of public safety impose a state processing and administra-

tive fee. The fee payment must accompany the fingerprint application, or otherwise be credited to the department prior to or at the same time with the department's receipt of the application documents. The manner of payment of the fee is by bank cashier check or money order payable to the New Mexico department of health or other method of funds transfer acceptable to the department. Business checks will be accepted unless the business tendering the check has previously tendered a check to the department unsupported by sufficient funds. Neither cash nor personal checks will be accepted. The fee may be paid by the care provider or by the applicant, caregiver or hospital caregiver. The department will set a fee in addition to the fees imposed by department of public safety and the federal bureau of investigation that will fully and completely cover costs incurred by the department to support activities required by the act and these rules. The fees will not be applied to any other activity or expense undertaken by the department.

F. Timely Submission:

Care providers shall submit all fees and pertinent application information for all individuals who meet the definition of an applicant, caregiver or hospital caregiver as described in Subsections B, D and K of 7.1.9.7 NMAC, no later than twenty (20) calendar days from the first day of employment or effective date of a contractual relationship with the care provider.

G. Maintenance of Records:

Care providers shall maintain documentation relating to all employees and contractors evidencing compliance with the act and these rules.

(1) During the term of employment, care providers shall maintain evidence of each applicant, caregiver or hospital caregiver's clearance, pending reconsideration, or disqualification.

(2) Care providers shall maintain documented evidence showing the basis for any determination by the care provider that an employee or contractor performs job functions that do not fall within the scope of the requirement for nationwide or statewide criminal history screening. A memorandum in an employee's file stating "This employee does not provide direct care or have routine unsupervised physical or financial access to care recipients served by [name of care provider]," together with the employee's job description, shall suffice for record keeping purposes.

[7.1.9.8 NMAC - Rp, 7.1.9.8 NMAC, 01/01/06]

7.1.9.9 CAREGIVERS OR HOSPITAL CAREGIVERS AND APPLICANTS WITH DISQUALIFYING CONVICTIONS:

A. Prohibition on

Employment: A care provider shall not hire or continue the employment or contractual services of any applicant, caregiver or hospital caregiver for whom the care provider has received notice of a disqualifying conviction, except as provided in Subsection B of this section.

(1) In cases where the criminal history record lists an arrest for a crime that would constitute a disqualifying conviction and no final disposition is listed for the arrest, the department will attempt to notify the applicant, caregiver or hospital caregiver and request information from the applicant, caregiver or hospital caregiver within timelines set forth in the department's notice regarding the final disposition of the arrest. Information requested by the department may be evidence, for example, a certified copy of an acquittal, dismissal or conviction of a lesser included crime.

(2) An applicant's, caregiver's or hospital caregiver's failure to respond within the required timelines regarding the final disposition of the arrest for a crime that would constitute a disqualifying conviction shall result in the applicant's, caregiver's or hospital caregiver's temporary disqualification from employment as a caregiver or hospital caregiver pending written documentation submitted to the department evidencing the final disposition of the arrest. Information submitted to the department may be evidence, for example, of the certified copy of an acquittal, dismissal or conviction of a lesser included crime. In instances where the applicant, caregiver or hospital caregiver has failed to respond within the required timelines the department shall provide notice by certified mail that an employment clearance has not been granted. The Care Provider shall then follow the procedure of Subsection A., of Section 7.1.9.9.

(3) The department will not make a final determination for an applicant, caregiver or hospital caregiver with a pending potentially disqualifying conviction for which no final disposition has been made. In instances of a pending potentially disqualifying conviction for which no final disposition has been made, the department shall notify the care provider, applicant, caregiver or hospital caregiver by certified mail that an employment clearance has not been granted. The Care Provider shall then follow the procedure of Subsection A, of Section 7.1.9.9.

B. Employment Pending

Reconsideration Determination: At the discretion of the care provider, an applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction and who has requested administrative reconsideration may continue conditional supervised employment pending a determination on

reconsideration.

C. Notice of Final Determination of Disqualification: Upon receipt of a notice of final determination of disqualification a care provider shall:

(1) immediately and permanently remove an applicant, caregiver or hospital caregiver from any position of employment that meets the definition of an applicant, caregiver or hospital caregiver as set forth in Subsections D and K of 7.1.9.9NMAC; and

(2) notify the department by letter within fourteen (14) calendar days, as determined by the postmark, of the date and type of action taken to satisfy the removal requirements of as set forth in Paragraph (1) of Subsection C of this section via written documentation signed by an authorized agent of the care provider.

[7.1.9.9 NMAC - Rp, 7.1.9.9 NMAC, 01/01/06]

7.1.9.10 ADMINISTRATIVE RECONSIDERATION:

A. Availability: The applicant, caregiver or hospital caregiver whose nationwide criminal history record reflects a disqualifying conviction may request an informal administrative reconsideration from the department.

B. Procedure for Requesting Administrative Reconsideration:

(1) An applicant, caregiver or hospital caregiver given notice of a disqualifying conviction may submit a written request for an administrative reconsideration. To be effective, the written request shall:

(a) be made within fourteen (14) calendar days, as determined by the postmark, from the date of the notice issued by the department;

(b) be properly addressed to the department;

(c) state the applicants', caregivers' or hospital caregivers' name, home and work address, and telephone numbers;

(d) state the applicants', caregivers' or hospital caregivers' employer or proposed employer name, address and telephone numbers;

(e) state the date of hire;

(f) state the position title;

(g) describe the duties of the position; and

(h) describe the care recipients.

(2) If the applicant, caregiver or hospital caregiver wishes to submit and have considered additional documentation (as specified in Paragraph (1) of Subsection C of this section) that additional documentation must be included with the request for an administrative reconsideration.

(3) An applicant, caregiver or

hospital caregiver requesting reconsideration shall include a signed declaration identifying with specificity any criminal felony convictions.

C. Written Documentation: The documentation submitted with the request for an administrative reconsideration may include information on the following.

(1) Credible and reliable evidence of the actual disposition of any arrest for which the nationwide criminal history record was incomplete. This could be evidence, for example, of the certified copies of an acquittal, a dismissal, or conviction of a lesser included crime, submitted to refute or rebut the presumption of a disqualifying conviction created because the nationwide criminal history record was incomplete in not showing the final disposition of an arrest for a crime that constitutes a disqualifying conviction.

(2) The applicant's, caregiver's or hospital caregiver's age at the time of each disqualifying conviction.

(3) Any mitigating circumstances when the offense was committed.

(4) Any court imposed sentence or punishment and, if completed, when completed.

(5) Any successfully completed rehabilitation program since the offense.

(6) The applicant's, caregiver's or hospital caregiver's full employment history since the disqualifying convictions.

(7) And other relevant materials the applicant, caregiver or hospital caregiver may wish to submit.

D. Reconsideration Proceeding: The reconsideration proceeding is intended to be an informal non-adversarial administrative review of written documentation. It will be conducted by a reconsideration committee designated for that purpose by the department. The reconsideration committee will issue an employment clearance determination based upon the completed request for reconsideration and all supporting documents submitted. In cases where the reconsideration committee finds the need for additional or clarifying information, the reconsideration committee may request that the applicant, caregiver or hospital caregiver supply such additional information within the time set forth in the reconsideration committees' request.

E. Factors in Determination: In determining whether an applicant's caregiver's or hospital caregiver's nationwide criminal history record reflects a disqualifying conviction may be employed, the reconsideration committee shall take into account the requirements of Section 28-2-1 to 28-2-6, NMSA 1978 of the criminal offender employment act. However, that act is not dispositive. The fol-

lowing factors may be considered:

(1) total number of disqualifying convictions;

(2) time elapsed since last disqualifying conviction or since discharge of sentence;

(3) circumstances of crime including whether violence was involved;

(4) activities evidencing rehabilitation, including but not limited to substance abuse or other rehabilitation programs;

(5) whether conviction was expunged by the court or whether an unconditional pardon was granted;

(6) false or misleading statements about any conviction in the signed declaration;

(7) evidence that applicant, caregiver or hospital caregiver poses no risk of harm to the health and safety of care recipients; and

(8) age of applicant, caregiver or hospital caregiver at time of disqualifying conviction.

F. Grounds for Reconsideration Employment Clearance Determination:

An applicant, caregiver or hospital caregiver may be issued a reconsideration employment clearance determination by the department where the request for reconsideration and accompanying documentation clearly demonstrates that the applicant, caregiver or hospital caregiver has satisfied one of the following three grounds for a reconsideration employment clearance determination.

(1) **Inaccuracy:** The nationwide criminal history record inaccurately reflects a disqualifying conviction. This ground for a reconsideration employment clearance determination applies:

(a) in instances of factual error in the nationwide criminal history record, from any source;

(b) in instances of error arising from the departments' application or use of the inappropriate criminal statute or standard to the disqualifying conviction at issue; and

(c) in instances where the department, pursuant to the applicant's, caregiver's or hospital caregiver's required consent, applies a rebuttable presumption of a disqualifying conviction to an arrest for a felony that lacks a final disposition in the nationwide criminal history record.

(2) **No Risk of Harm:** The employment or contractual services provided by an applicant, caregiver or hospital caregiver with a disqualifying conviction presents no risk of harm to a care recipient. The reconsideration employment clearance determination issued by the reconsideration committee under this ground may be limited, in certain cases, based upon the evi-

dence in the request for reconsideration and the accompanying documentation. The reconsideration determination of whether the applicant, caregiver or hospital caregiver presents no risk of harm to a care recipient is based upon the risk arising from the disqualifying conviction.

(3) No Bearing on Fitness: The disqualifying conviction does not directly bear upon the applicant's, caregiver's, or hospital caregiver's fitness for employment. [7.1.9.10 NMAC - Rp, 7.1.9.10 NMAC, 01/01/06]

7.1.9.11 DISQUALIFYING CONVICTIONS. The following felony convictions disqualify an applicant, caregiver or hospital caregiver from employment or contractual services with a care provider:

- A. homicide;
 - B. trafficking, or trafficking in controlled substances;
 - C. kidnapping, false imprisonment, aggravated assault or aggravated battery;
 - D. rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure, or other related felony sexual offenses;
 - E. crimes involving adult abuse, neglect or financial exploitation;
 - F. crimes involving child abuse or neglect;
 - G. crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud, or receiving stolen property; or
 - H. an attempt, solicitation, or conspiracy involving any of the felonies in this subsection.
- [7.1.9.11 NMAC - Rp, 7.1.9.11 NMAC, 01/01/06]

History of 7.1.9 NMAC:

Pre NMAC History: None.

History of Repealed Material:

7 NMAC 1.9, Caregivers Criminal History Screening Requirements (filed 08-03-1998) repealed 08/15/02.

7.1.9 NMAC, Caregivers Criminal History Screening Requirements (filed 08/15/02) repealed 01/01/06.

NMAC History:

7 NMAC 1.9, Caregivers Criminal History Screening Requirements (filed 08-03-1998) replaced by 7.1.9 NMAC, Caregivers Criminal History Screening Requirements effective 08/15/02.

7.1.9 NMAC, Caregivers Criminal History Screening Requirements (filed 07/19/02) replaced by 7.1.9 NMAC, Caregivers Criminal History Screening Requirements effective 01/01/06.

**NEW MEXICO
DEPARTMENT OF HEALTH**

**TITLE 7 HEALTH
CHAPTER 27 EMERGENCY MEDICAL SERVICES**

PART 2 CERTIFICATION AND LICENSING OF EMERGENCY MEDICAL SERVICES PERSONNEL

7.27.2.1 ISSUING AGENCY: New Mexico department of health, division of epidemiology and response, emergency medical systems bureau. [7.27.2.1 NMAC - Rp, 7.27.2.1 NMAC, 1/01/2006]

7.27.2.2 SCOPE: These rules apply to New Mexico emergency medical services, including the service directors and medical directors of those services; approved New Mexico EMS training programs and graduates of approved New Mexico EMS training programs; New Mexico licensed EMS personnel including those previously licensed; persons trained, certified or licensed in another state or territory seeking to acquire licensure in New Mexico; EMS licensing commission; national registry of emergency medical technicians; and any other entity associated with the licensing of emergency medical services personnel in New Mexico. [7.27.2.2 NMAC - Rp, 7.27.2.2 NMAC, 1/01/2006]

7.27.2.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the following statutory authorities: 1) the New Mexico Department of Health Act, Subsection E of Section 9-7-6 NMSA 1978, which authorizes the secretary of the department of health to "... make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions," and; 2) the Emergency Medical Services Act, Subsection A of Section 24-10B-5 NMSA 1978, which authorizes the department to adopt and enforce licensure requirements by regulation, and Paragraph (3) of Subsection B of Section 24-10B-5 NMSA 1978 which authorizes the department to establish a schedule of reasonable fees for application, examination, licensure and regular renewal thereof.

A. Administration: Administration and enforcement of these rules is the responsibility of the emergency medical systems bureau of the division of epidemiology and response, department of health.

B. Guidelines: In the absence of specific direction in the law or these rules as to the standard of practice, the

current national standard for emergency cardiac care (ECC), the national highway traffic safety administration of the United States department of transportation standard curriculum, and the EMT code of ethics, as adopted in 1978 by the national association of emergency medical technicians, shall serve as guidelines.

C. Other Law and Regulations: These rules are subject to the provisions of the department of health's 7 NMAC 1.3, "Health Records."

D. Use of Certain Terms Prohibited: The use of "licensed emergency medical dispatchers", "licensed emergency medical dispatch instructors", "licensed emergency medical services first responder", "licensed emergency medical technician (EMT)-basic", "licensed EMT-intermediate", or "licensed EMT-paramedic", or display of the "Star of Life" except as allowed in the United States department of transportation (US-DOT) trademark specifications, or similar terms or emblems connoting expertise in basic or advanced life support by any person not licensed hereunder is hereby prohibited. See Emergency Medical Services Act, Paragraph (1) of Subsection C of 24-10B-5 NMSA 1978.

[7.27.2.3 NMAC - Rp, 7.27.2.3 NMAC, 1/01/2006]

7.27.2.4 DURATION: Permanent.

[7.27.2.4 NMAC - Rp, 7.27.2.4 NMAC, 1/01/2006]

7.27.2.5 EFFECTIVE DATE: January 01, 2006 unless a later date is cited at the end of a section.

[7.27.2.5 NMAC - Rp, 7.27.2.5 NMAC, 1/01/2006]

7.27.2.6 OBJECTIVE: These rules will inform the emergency medical services community of licensure requirements for emergency medical services personnel. It is the purpose of these rules to provide for the licensure of emergency medical dispatchers, emergency medical dispatch-instructors, emergency medical services first responders and emergency medical technicians, and to assist in the provision of a comprehensive system of emergency medical services in the state of New Mexico.

[7.27.2.6 NMAC - Rp, 7.27.2.6 NMAC, 1/01/2006]

7.27.2.7 DEFINITIONS:

A. "Academy" means a separately funded emergency medical services training program administered through the department of emergency medicine of the university of New Mexico school of medicine.

B. "Act" means the Emergency Medical Services Act, Section 24-10B-1, et seq., NMSA 1978.

C. "Advance directive" means a written instruction, such as a living will, durable power of attorney for health care, or emergency medical services do not resuscitate form recognizable under state law and relating to the provision of health care when an individual is incapacitated.

D. "Advisory committee" means the statewide emergency medical services advisory committee appointed by the secretary of health.

E. "Ambulance service" means any provider of ambulance service subject to the jurisdiction of the department of health pursuant to and subject to the jurisdiction of the New Mexico public regulation commission, pursuant to the Ambulance Standards Act, Section 65-6-1, et seq., NMSA 1978, Article XI of the New Mexico Constitution, the Municipal Transit Law Section 3-52-1, et seq., NMSA 1978, and other laws.

F. "Applicant" means a person who has indicated an intention to gain licensure as an EMS first responder, emergency medical dispatcher, emergency medical dispatcher instructor or an EMT in the state of New Mexico, as evidenced by submission of the proper fees, documentation, and bureau approved application form.

G. "Approved emergency medical services training program" means an emergency medical services training program that is sponsored by a post-secondary educational institution, accredited by a national educational accrediting organization for emergency medical services or active in the accreditation process and is approved by the joint organization on education committee and participates in the joint organization on education committee.

H. "Basic emergency medical technician" or "EMT-B" means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

I. "Bureau" means the emergency medical systems bureau of the epidemiology and response division of the New Mexico department of health.

J. "Bureau approved" means any course, form, or official document that has received the approval of the bureau for use in a training or licensure context.

K. "Cardio-pulmonary resuscitation (CPR)" means training required for licensure that meets the intent of the current national emergency cardiac care (ECC) guidelines for professional rescuers, as approved by the bureau.

L. "Certified emergency

medical service" means an organization that meets minimum standards to provide emergency services and is approved by the bureau, including emergency medical dispatch agencies, pre-hospital or inter-facility care services and special event services organized to provide emergency medical services.

M. "Contact hour" means a unit of measurement of between fifty (50) and sixty (60) minutes of bureau-approved organized learning experience which is designed to meet educational objectives for continuing education.

N. "Commission" means the New Mexico emergency medical services licensing commission appointed by the secretary of health.

O. "Continuing education" or "CE" means EMS training that is approved by the bureau and is required every two years for renewal of licensure.

P. "Curriculum" means a program of study utilizing approved minimum curricula content based on the national standard curriculum for EMS as published by the national highway and traffic safety administration (NHTSA) and approved by the joint organization on education for formal training courses required for EMS first responder, EMT-basic, EMT-intermediate and EMT-paramedic.

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

R. "Distributive education" means training and education accomplished outside the classroom though computer-based-training, self study modules, web-casts via the internet and other methods of out-of-classroom didactic education that includes an evaluation component. Distributive education is synonymous with distance education.

S. "Emergency medical dispatcher" or "EMD" means a person who is trained and licensed pursuant to Subsection G of Section 24-10B-4 NMSA 1978 to receive calls for emergency medical assistance, provide pre-arrival medical instructions, dispatch emergency medical assistance and coordinate its response.

T. "Emergency medical dispatch agency" or "EMDA" means any organization, or a combination of organizations working cooperatively, that routinely accepts calls for emergency medical assistance and employs emergency medical dispatch priority reference system (EMDPRS) techniques.

U. "Emergency medical dispatch priority reference system" or "EMDPRS" means a medically approved reference system used by an emergency medical dispatch agency (EMDA) to dispatch aid to medical emergencies, which includes systematized caller interrogation;

systematized pre-arrival instructions to the caller based upon protocols matching the dispatcher's evaluation of injury or illness severity; and prioritized vehicle response.

V. "Emergency medical services" or "EMS" means the services rendered by licensed providers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

W. "Emergency medical services first responder" or "EMSFR" means a person who is licensed by the department, and who functions within the emergency medical services system to provide initial emergency aid according to the current scopes of practice.

X. "Emergency medical services instructor/coordinator" or "EMT-I/C" means an individual approved by an EMS training institution and registered by the bureau to conduct and instruct EMS education programs.

Y. "Emergency medical technician" or "EMT" means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

Z. "EMT skill evaluator" means a health care provider trained and approved by the bureau to participate in EMT licensing examinations to observe and evaluate the performance of an applicant's skills for licensure as an EMT.

AA. "Examination attempt" means an attempt to successfully complete the New Mexico EMT licensing examination. An attempt constitutes taking a written or practical examination. Retests of either a written or practical examination are considered an examination attempt.

BB. "Fully licensed" means an individual licensed to practice medical patient care at a specified level

CC. "Graduate license" means a license issued to in-state and out-of-state graduates of a bureau approved EMS training program used for performing EMS duties under supervision and direct observation prior to full licensure. The graduate license shall be valid for a period of up to six (6) months from the date of course completion or until failure of any part of the licensing examination.

DD. "Initial licensure" means the first time a person is licensed in New Mexico as an EMD, EMD instructor, EMS first responder, EMT, or subsequent licensure of a previously licensed New Mexico EMT, who has either established residence in another state or has retaken a full curriculum or accomplished re-entry procedures to regain an expired license.

EE. "Intermediate emergency medical technician" or "EMT-I"

means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

FF. "License" means a full, temporary or graduate license issued by the department to all EMD's, first responders, and EMT's pursuant to the Emergency Medical Services Act, Section 24-10B-5 NMSA 1978.

GG. "Medical control" means supervision provided by or under the direction of physicians to providers by written protocols or direct communication.

HH. "Medical direction" means guidance or supervision provided by a physician to a provider or emergency medical services system and which includes authority over and responsibility for emergency medical dispatch, direct patient care and transport of patients, arrangements for medical control and all other aspects of patient care delivered by a provider.

II. "Medical direction committee" means a committee of physicians and EMT's, appointed by the secretary of health to advise the bureau on all matters relating to medical control and medical direction.

JJ. "Medical director" means a physician who is responsible for all aspects of patient care provided by an EMS system or EMS provider service, in accordance with 7.27.3 NMAC.

KK. "Moral turpitude" means conduct contrary to justice, honesty, modesty or good morals including such acts as domestic abuse, drunk driving or other similar convictions.

LL. "National registry" means the national registry of emergency medical technicians based in Columbus, Ohio.

MM. "Offline Medical Control" means performing EMS actions or medication administration under standing orders or protocols.

NN. "Online Medical Control" means direct voice contact with a medical control physician.

OO. "Out-of-state transition course" means a standardized training course required and approved by the bureau for an out-of-state EMT applicant seeking licensure in New Mexico.

PP. "Paramedic" or EMT-P means a provider who has been licensed by the department to provide patient care according to the current scopes of practice.

QQ. "Physician" means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico.

RR. "Protocol" means a predetermined, written medical care plan approved by the medical director and includes standing orders.

SS. "Provider" means a person who has been licensed by the department to provide patient care pursuant to the Emergency Medical Services Act.

TT. "Re-entry" means a process for a person, whose license has been expired for less than three years, to accomplish a given set of requirements to re-enter a previously held level of licensure.

UU. "Regional office" means an emergency medical services planning and development agency formally recognized and supported by the bureau.

VV. "Re-instatement" means a process for those persons who have completed the renewal requirements before the December 31st deadline, but fail to renew licensure by March 31st, to renew licensure between April 1st and May 31st of the expiration year.

WW. "Renewal" means relicensure every two years, including completion of all requirements for specified levels by December 31st that occurs prior to expiration of licensure. Renewal applications shall be received by the bureau by the last day of February prior to expiration of licensure and may be postmarked and submitted by March 31 prior to expiration of licensure for a higher fee.

XX. "Retest" means a written or practical examination given after failure of the applicant's initial examination.

YY. "Secretary" means the New Mexico secretary of health.

ZZ. "Special skills" means a set of procedures or therapies that are beyond the usual scope of practice of a given level of licensure and that have been approved by the medical direction committee for use by a specified provider.

AAA. "Standing orders" means strictly defined written orders for actions, techniques or drug administration, signed by the medical director, to be utilized when communication has not been made with an on-line medical control physician.

BBB. "State emergency medical services medical director" means a physician designated by the department to provide overall medical direction to the statewide emergency medical services system, whose duties include serving as a liaison to the medical community and chairing the medical direction committee.

CCC. "Temporary license" means a license issued by the department to applicants that are fully licensed in another state or certified with the national registry of EMTs, as determined by the bureau. The temporary license shall be valid for a period of up to six months from the date issued, or until failure of any part of the licensing examination.

[7.27.2.7 NMAC - Rp, 7.27.2.7 NMAC, 1/01/2006]

7.27.2.8 GENERAL LICENSURE:

A. Authorizations to Practice: No person shall function as, or represent themselves as an emergency medical services provider or offer, whether or not for compensation, any services included in these rules, unless currently licensed as an emergency medical dispatcher (EMD), emergency medical dispatcher instructor (EMD-I), EMS first responder or EMT under these rules. This provision is enforceable by civil action as provided by law.

B. Licensing Agency: As provided by law, the agency responsible for the licensure of an EMD, EMD-I, EMS first responder and EMT's in New Mexico is the emergency medical systems bureau of the epidemiology and response division of the department of health.

C. Eligibility: Initial licensure as an EMD, EMD-I, EMS first responder or EMT is open to all persons who have met the requirements prescribed in these rules, whether or not they are affiliated with an ambulance service, fire department, rescue service, or other emergency medical service in New Mexico, and irrespective of their monetary remuneration for such service.

D. Establishment of the New Mexico Registry of Emergency Medical Services Personnel: The New Mexico Registry of emergency medical services personnel is established and maintained at the bureau. The registry is open to all persons who have met the requirements for licensure as an EMS provider as prescribed by these rules.

E. Authorized Classifications: There are six (6) classifications of fully licensed EMS provider that are recognized in the New Mexico registry of emergency medical services personnel. Generally, licensure as an emergency medical dispatcher-instructor shall also include licensure as an emergency medical dispatcher. Licensure as an EMT-paramedic shall also include licensure as an EMT-intermediate; and licensure as an EMT-intermediate shall also include licensure as an EMT-basic. The highest level of provider licensure will be shown on the person's certificate and licensure card. This section does not apply to a graduate license.

(1) emergency medical dispatcher (EMD);

(2) emergency medical dispatcher instructor (EMD-I);

(3) emergency medical services first responder (EMSFR);

(4) emergency medical technician - basic (EMT-B);

(5) emergency medical technician - intermediate (EMT-I);

(6) emergency medical technician

- paramedic (EMT-P).

F. General Training

Standards: New Mexico EMS training programs shall meet the training standards for approval by the bureau. The bureau shall provide an aggregate report on pass/fail rates of graduates that complete a state EMS licensing examination. The bureau shall distribute this report in May and November of each year to each bureau approved New Mexico EMS training program. The bureau shall periodically evaluate the training standards in each bureau approved EMS training program, which may include an on-site inspection and review for compliance with the standards outlined in this section. The bureau approved New Mexico EMS training program shall:

(1) submit an annual report to the bureau that provides an overview of EMS education and training; this report shall be submitted to the bureau no later than February 1 of any given year;

(2) submit an addendum report to the bureau that supplements the annual report; this report shall be submitted to the bureau no later than September 1 of any given year; the annual and addendum reports shall contain the following elements:

(a) number of courses that were instructed by the training program by level of education, i.e. EMS first responder, EMT-basic, EMT-intermediate, EMT-paramedic, EMS instructor-coordinator; and

(b) pass/fail rate of each course of instruction where students are enrolled to receive course completion certificates, including the name of the course and the name of the instructor-coordinator; and

(c) aggregate pass/fail rate of each level of EMS instruction where students are enrolled to receive course completion certificates; and

(d) list of current instructor-coordinators employed with the bureau approved training program; and

(e) list of new instructor-coordinators employed with the training program over the time period of the report; and

(f) any changes in the status of any instructor-coordinator; and

(g) any changes to the EMS curriculum at any level of instruction; and

(h) summary of any quality improvement activities accomplished during the time period of the report; and

(i) list of clinical skills required for course completion by level, if applicable; and

(j) list of satellite campuses; and

(k) contact information of key staff with the training program;

(3) be accredited by a national education accrediting organization for

emergency medical services;

(4) utilize approved minimum curricula content based on the national standard curriculum for EMS as published by the national highway and traffic safety administration (NHTSA) and approved by the joint organization for education committee (JOE);

(5) have, at a minimum, an administrative director, an EMS medical director, and a course instructor-coordinator;

(6) ensure that an instructor-coordinator is in attendance at all didactic and practical training sessions, with substitution permissible on an excused absence basis only;

(7) inform the bureau if an instructor/coordinator is terminated due to inappropriate conduct or negligence; the bureau shall be notified by the training program of the termination within ten (10) working days;

(8) develop and utilize an instructional quality assurance program to review course and instructor effectiveness; a copy of the quality assurance program shall be provided to the bureau; the following measures may initiate a quality assurance review by the bureau;

(a) failure of an approved New Mexico training program to maintain an aggregate state licensure examination pass rate of seventy percent (70%) or better of students attempting to pass their initial state written or practical EMS examination for each level of licensure, as determined over a period of time of six (6) months or greater;

(b) failure of an approved New Mexico training program instructor-coordinator to maintain an aggregate state licensure examination pass rate of seventy percent (70%) or better of students attempting to pass their initial state written or practical EMS examination for each level of licensure, as determined over a period of time of six (6) months or greater;

(c) failure of an approved New Mexico training program to maintain an aggregate course pass rate of seventy percent (70%) or better of students completing a core EMS course of instruction; and

(d) failure of an approved New Mexico training program instructor-coordinator to maintain an aggregate course pass rate of seventy percent (70%) or better of students completing a core EMS course of instruction; and

(e) complaints, reports or course trends indicating the possible need for a quality assurance review by the bureau;

(9) submit to the bureau for approval, refresher course curricula that follow the New Mexico refresher course blueprints as outlined in 7.27.2.10 NMAC of these rules, whether the course is conducted

by the training program or through a service training agreement, which has been approved by the training program;

(10) use distributive education for initial formal training courses as deemed necessary by the approved EMS training program, based on the distributive education guidelines provided by the joint organization on education committee;

(11) review and approve any formal EMS courses and course content that will allow graduates to apply for EMS licensure in the state of New Mexico or with the national registry of EMTs, prior to delivery by an instructor-coordinator;

(12) submit a bureau approved course registration form, along with completed license application forms for all students enrolled in an initial course of instruction; course registration and license application forms shall be submitted to the bureau for processing within thirty (30) days from the start of the course;

(13) ensure that all affiliated instructor-coordinators are registered with the bureau on the appropriate form;

(14) notify the bureau within ten (10) working days if an instructor-coordinator resigns or is terminated due to inappropriate conduct or negligence;

(15) ensure that a formal preceptor program is developed and utilized for all field and clinical training; the preceptor program shall include the following standards:

(a) EMS providers functioning as preceptors within an EMS service shall be approved by the EMS service director, the EMS service medical director, the training program service director and the training program medical director; preceptors shall be licensed as a provider at or above the student's level of training; preceptors shall ensure that only approved skills, commensurate with the student's scope of training, are performed by the student;

(b) students practicing in a field training environment shall function under a formal field preceptorship agreement between the EMS service and the training program; and

(c) students performing field or clinical skills as part of an bureau approved EMT-intermediate or EMT-paramedic training program must be fully licensed or certified at the EMT-basic level.

G. Training Program Instructor-Coordinator Standards: Approved New Mexico EMS training programs shall maintain instructor-coordinator standards to ensure quality of instruction. Instructor-coordinators shall:

(1) be affiliated with an approved EMS training program; and

(2) be registered with the bureau by the training program; and

(3) successfully complete an

instructor-coordinator training course that meets or exceeds the national standard curriculum for EMS instructor-coordinators as published by NHTSA and approved by the bureau; and

(4) be currently licensed as a New Mexico EMS provider or higher, medical professional level; and

(5) shall meet the qualifications for instructor-coordinators as established by the joint organization on education committee.

H. Scope of Practice: The scope of practice for each level of licensure is found in section 7.27.2.14 NMAC, appendix A to these rules, and shall be updated at least annually and issued by the bureau in accordance with the EMS Act, Section 24-10B-7.C(4) NMSA 1978. Licensed EMD's, EMSFR's and EMT's shall only perform those skills, techniques, medications, and procedures found within the New Mexico scope of practice and as authorized by the service medical director (also see EMS medical direction rule 7.27.3 NMAC).

I. Training Required: As outlined in the New Mexico scopes of practice, prior to utilizing any new skill, technique, medication, or procedure designated as "service medical director approved", it shall be documented by the service director, medical director, or bureau approved EMS training program that the EMS provider has been appropriately trained to perform the skills, techniques, medications, or procedures. Additionally, each EMS provider must have a signed authorization from the services medical director on file at the EMS services headquarters or administrative offices.

J. Medical Direction Approval/Control Required: Medical control is required for certain skills and medications at all levels of EMS as outlined in the New Mexico scopes of practice. Those EMS personnel who function without medical direction shall only perform those skills, techniques and procedures that do not require medical director approval. Any person who is issued a temporary or graduate license shall only perform the skills, techniques, medications, and procedures for the approved level, as established by the medical direction committee and found in Appendix A, 7.27.2.14 NMAC of these rules.

K. Special Skills: Special skills, which are all considered advanced life support, are skills outside the usual scope of practice for a level of licensure. EMS services or systems that wish to apply for special skills authorization, shall submit a written application as set forth in Appendix C, 7.27.2.16 NMAC of these rules. Services or systems may apply for any skill at any level. Personnel who suc-

cessfully complete a special skills program shall be authorized to utilize advanced skills and drugs only with medical director approval and under the medical control of the EMS system that received the program approval.

L. Licensing Application Procedures: Persons seeking New Mexico licensure in any of the six (6) classifications shall make application using the appropriate forms as provided by the bureau and present the required documentation, which shall remain in the person's licensure file. Applications and forms can be obtained from the bureau.

M. Licensure Periods: Licensure periods are twenty-seven (27) months in length except for the initial period, which varies according to the date of the initial license. The second or subsequent period of licensure will be for a full twenty-seven (27) month period, regardless of the date of application for renewal, or the date for processing of the renewal license. This period will begin on January 1 of the renewal year. Requirements for renewal of licensure shall be completed by the December 31st that occurs prior to expiration of licensure.

N. Expiration Dates: The expiration date for a license is established as March 31 of a given year. The year of initial expiration will depend on what month during the year a person was originally licensed.

(1) The initial licensure period shall begin on January 1 for persons who are licensed during the first six (6) months of a given year. The expiration date for this license will be twenty-seven (27) months later or March 31. For example: A person is licensed by the bureau on February 10, 2006. The person's expiration date will be March 31, 2008. All subsequent renewal periods will be for a full twenty-seven (27) month period running from January 1 for twenty-seven (27) months, and ending on March 31.

(2) For persons who are initially licensed during the last six (6) months of a given year, the expiration date shall be counted from January 1 of the following year. For example: A person is licensed on August 10, 2006. The person's expiration date will be March 31, 2009. All subsequent renewal periods will be for a full twenty-seven (27) month period, running from January 1 and ending on March 31.

O. New Mexico State Licensing Examinations: All EMS candidates must successfully complete the state of New Mexico licensing examination.

(1) The initial state licensing examination shall be completed within nine (9) months based from the date of course completion. Successful completion of the licensing examination process that results in

the issuance of a license shall be completed within twenty-four (24) months based from the date of course completion. Should a candidate fail to become licensed within twenty-four (24) months, completion of a new EMSFR or EMT initial training course will be required. The bureau may approve an initial licensing testing extension on a case by case basis.

(2) Normally, state licensing examinations are conducted by the bureau. When needed, regional offices and other representatives may be designated to conduct licensing examinations. In any case, all examination sites will be conducted using the "bureau examination standard operating procedures".

(3) Applications for the state licensing examinations, at any classification, shall be made on the appropriate forms as provided by the bureau. Applications must be received by the bureau prior to the application deadline set forth in the annual schedule of licensure examinations, issued by the bureau.

(4) Persons applying for examination and licensing at any level, upon submission of the appropriate documentation as indicated in these rules, shall be allowed a maximum of three (3) examination attempts at the level for which the applicant has applied. Upon failure of the third (3rd) examination attempt, the person must successfully complete a New Mexico approved EMS refresher course for the appropriate level. Following this, the person will be allowed a fourth and final examination attempt. A person that fails four (4) times shall complete the entire training program again before any other testing is allowed at that level. If a person has an unexcused absence from a scheduled examination, as determined by the bureau, it shall count as one (1) examination attempt.

(5) Any applicant who has failed the state licensing examination at an advanced life support level as described in these rules may be allowed to take the state licensing examination at a lower level. Applicants under this section shall be allowed to attempt the state licensing examination at a lower level of licensure no more than two (2) times. Further examinations shall not be allowed until successful completion of an approved EMS training course is documented.

(6) Applicants for examination shall pay the examination and licensing fees upon submission of application to the bureau. Also, additional examination fees will be assessed for each subsequent examination attempt. These additional fees shall be submitted to the bureau with the retest application. See 7.27.2.12 NMAC for a complete description of licensing and examination fees.

(7) There will be no refund of

fees, except in unusual circumstances as determined by the bureau.

(8) An examination candidate who fails to attend a scheduled test site or does not provide a written or verbal notice of cancellation at least forty-eight (48) hours from the scheduled test date, shall forfeit one (1) examination retest attempt. Future requests for a retest attempt must be accompanied by a retest application and appropriate retest fee.

P. Graduate License for all EMT levels: The role of the EMS graduate license is to grant in-state and out-of-state graduates of a bureau approved EMS training program authorization to practice skills commensurate with their scope of training in the field setting under the direct observation and supervision of an EMS provider licensed at or above the graduate's training program level. The graduate license shall only be used under approved medical direction. The EMS service director and the EMS service medical director shall identify and maintain a list of approved preceptors. The graduate licensee shall be fully supervised by the preceptor when performing patient care. The preceptor will be responsible for all patient care including patient care activities in the patient compartment when transporting to a medical facility. This will necessitate a vehicle driver in addition to the licensed EMT preceptor and the graduate licensee. During a mass casualty incident, the graduate licensee shall only provide assessment and treatment at the level for which the graduate licensee is fully licensed; if the graduate licensee is not fully licensed at a lower level, they shall only provide non-medical assistance. The EMS graduate license shall remain in effect for a period of six (6) months after the course completion date or until failure of any portion of the state or national licensing examination. All applicants for graduate licensure shall:

- (1) submit a completed bureau approved license application form; and
- (2) provide evidence of current bureau approved CPR certification; and
- (3) provide evidence of current bureau approved ACLS certification (**paramedic** only); and
- (4) provide a course completion certificate from a bureau approved EMS training program; and
- (5) pay all examination and licensure fees as required by these rules.

Q. Americans With Disabilities Act: When requested by an applicant who otherwise meets the minimum qualifications, the department shall reasonably accommodate the qualified person with disabilities in the examination process, in accordance with the Americans With Disabilities Act and other applicable

state and federal laws. Persons requiring accommodations must make an advance request of at least ten (10) calendar days prior to the scheduling request postmark deadline, as found in the bureau examination site schedule, for an examination site. The request for accommodation shall be forwarded to the bureau for consideration of such an accommodation, to include supporting documentation from the applicant's health care provider and a medical or professional diagnosis.

R. Recognition of out-of-state licensure for emergency incidents: During emergency situations, the secretary may waive initial licensure requirements for out-of-state EMS personnel based on the following:

- (1) an individual or agency must be responding to a specific emergency incident; and
 - (2) an individual or agency shall contact the EMS bureau prior to beginning EMS operations in New Mexico; and
 - (3) the individual or agency shall provide evidence (copies) of individual certification or licensure from another state or the national registry; and
 - (4) if wildland fire, an individual or agency shall provide a national wildland fire "request for recognition" form; and
 - (5) an individual or agency shall provide evidence of written medical protocols and scope of practice. The bureau may restrict the provided scope of practice; and
 - (6) the individual or agency shall contact the local EMS system for coordination of services; and
 - (7) the maximum approved time for out-of-state licensure for a specific emergency incident is thirty (30) days and may be renewed on a case by case basis.
- [7.27.2.8 NMAC - Rp, 7.27.2.8 NMAC, 1/01/2006]

7.27.2.9 INITIAL LICENSURE:

A. General: This section specifies requirements for initial licensure. This section applies to all applicants who are graduates of bureau approved EMS training programs. Any person applying for New Mexico licensure from out-of-state, other programs, or with national registry certification shall be considered for licensure under this section. Specific time periods apply for EMS licensing examinations, according to Subsection O of 7.27.2.8 NMAC.

B. Recognition: Each out-of-state applicant shall be assessed on a case-by-case basis for recognition of initial licensure requirements. The bureau may legally recognize other states, programs, or the national registry of emergency medical technicians requirements, where accredita-

tion, EMS scope of practice, training standards, certification or licensure standards meet or exceed those of New Mexico.

C. Licensed Emergency Medical Dispatcher (EMD): Licensure as an emergency medical dispatcher in New Mexico is mandatory for all persons who provide pre-arrival medical instructions to the emergency and non-emergency caller.

(1) An applicant for licensure as an EMD shall:

- (a) be eighteen (18) years of age, and be of good character; and
- (b) provide evidence of a current bureau approved CPR certification; or, if physically unable to be CPR certified, provide written documentation of current knowledge and practical applications of CPR, as defined in these rules; and
- (c) successfully complete an EMD training course, which has been approved by the bureau, that meets or exceeds the U.S. department of transportation (USDOT) standards for EMD, within the previous twelve (12) months; and
- (d) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and
- (e) submit the required application and licensure fees as required by these rules.

(2) Persons who do not have a certificate of completion from a New Mexico approved EMD training program but are currently certified or licensed in another state as an EMD, or have successfully completed an equivalent out-of-state EMD training course as determined by the bureau, within the previous twelve (12) months, may apply for licensure by submitting an application along with documentation of current out-of-state certification or license, or an out-of-state EMD course completion certificate.

(3) Upon recognition by the bureau, the person may be fully licensed as an EMD.

D. Licensed EMD-Instructor: An applicant for licensure as an EMD-instructor shall:

- (1) be a licensed EMT-basic, or higher level of licensure; or, if physically unable to be licensed as an EMT-basic, provide verification of successful course completion from an EMT-B training program; and
- (2) have graduated from high school or possess a GED; and
- (3) be eighteen (18) years of age, and be of good character; and
- (4) provide evidence of a current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR, as defined by these regulations; and

(5) be currently licensed as an EMD; and

(6) have successfully completed an EMD- Instructor training course from an EMD program which is approved by the bureau; and

(7) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(8) submit the required application and licensure fees as required by these rules.

E. Licensed Emergency Medical Services First Responder: An applicant for licensure as an EMS first responder shall:

(1) be of good character; and

(2) be at least eighteen (18) years of age; or

(3) be at least sixteen (16) years of age and meet the following requirements:

(a) be affiliated with a service, and shall submit a letter of support from the service director; and

(b) shall notify the bureau, in writing, of any change of service affiliation; and

(c) shall submit a notarized parental or guardian consent

(4) all applicants shall meet the following requirements:

(a) submit a completed, bureau approved license application form; and

(b) provide evidence of current bureau approved CPR certification; and

(c) present a certificate of completion from an EMSFR course completed at a bureau approved EMS training program; and

(d) successfully complete the New Mexico EMSFR licensing examination; the initial state licensing examination shall be completed within nine (9) months from the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months from the date of course completion; and

(e) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(f) pay all examination and licensure fees as required by these rules.

(5) all persons who do not have a certificate of completion from a New Mexico approved EMSFR training program, but are currently certified or licensed in another state at the first responder level, or have successfully completed an approved equivalent out-of-state EMS first responder course as determined by the bureau, within the previous twelve (12) months, may apply to the bureau in writing for New Mexico licensure in accordance with Subsection B of this section.

F. Emergency Medical

Technician Basic (EMT-B): An applicant for licensure as an EMT-B shall meet the following requirements:

(1) shall be of good character; and

(2) be at least eighteen (18) years old; or

(3) be at least seventeen (17) years of age and meet the following requirements:

(a) be affiliated with a service and shall submit a letter of support from the service director; and

(b) shall notify the bureau, in writing, of any change of service affiliation; and

(c) shall submit a notarized parental or guardian consent;

(4) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing, which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC of these rules;

(5) all applicants applying to be licensed, shall meet the following requirements:

(a) submit a completed, bureau approved license application form; and

(b) provide evidence of current bureau approved CPR certification; and

(c) present a certificate of completion from an EMT-B course completed at a bureau approved EMS training program, and accomplished within the previous nine (9) months; and

(d) successfully complete the New Mexico EMT-B licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course completion;

(e) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(f) pay all examination and licensure fees as required by these rules;

(g) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC of these rules;

(6) persons who do not have a certificate of completion from a bureau approved EMT-B training program, but are currently licensed or certified in another state or certified with the national registry at the EMT-B level, may apply for New Mexico licensure as provided below:

(a) submit an application along with documentation of current out-of-state certification or license, or national registry

certification; and

(b) provide evidence of current bureau approved CPR certification; and

(c) pay all examination and licensure fees as required by these rules; and

(d) successfully complete a bureau approved out-of-state transition course, as determined by the bureau; and

(e) successfully complete the New Mexico EMT-B licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of application; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course application; and

(f) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(g) upon approval by the bureau, the person may be fully licensed as an EMT-B for the remainder of the previous certification/licensing authority's certification/licensure period, as determined by the bureau;

(h) the person may be granted a temporary license to practice as an EMT-B for a period of up to six (6) months or until failure of an EMT-B licensure examination, whichever occurs first; while under a temporary license, those applicants seeking full New Mexico licensure shall complete an out-of-state transition course approved by the bureau and complete the New Mexico EMT-B licensure examination; the temporary license also facilitates licensure of an out-of-state seasonal EMT-B and shall only be issued once in a twelve (12) month period, as determined by the bureau; in this case, the seasonal license is valid for six (6) months from the date of issue and may be issued again, but only once in every subsequent twelve (12) month period;

(i) temporary licensure commences on the issue date of the temporary license from the bureau;

(ii) a temporary license may be issued only upon application and payment of required fees;

(7) persons holding a temporary license shall be fully licensed when they have:

(a) successfully completed the New Mexico EMT-B licensure written and practical examination; and

(b) remit payment of all required fees.

G. Emergency Medical Technician-Intermediate (EMT-I): An applicant for licensure as an EMT-I shall meet the following requirements:

(1) be eighteen (18) years old, and be of good character; and

(2) submit a completed, bureau approved license application form; and

(3) provide evidence of current bureau approved CPR certification; and

(4) be fully licensed as an EMT-basic; and

(5) present a certificate of completion from an EMT-I course completed at a bureau approved EMS training program, and accomplished within the previous nine (9) months; and

(6) successfully complete the New Mexico EMT-I licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of course completion; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of course completion; and

(7) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(8) pay all examination and licensure fees as required by these rules;

(9) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC;

(10) persons who do not have a certificate of completion from a bureau approved EMT-I training program, but are currently certified or licensed in another state or certified with the national registry at the EMT-I level, may apply for licensure as provided below:

(a) submit an application along with documentation of current out-of-state certification/license or national registry certification; and

(b) provide evidence of current bureau approved CPR certification; and

(c) pay all examination and licensure fees as required by these rules; and

(d) successfully complete a bureau approved out-of-state transition course, as determined by the bureau; and

(e) successfully complete the New Mexico EMT-I licensing examination; the initial state licensing examination shall be completed within nine (9) months based on the date of application; successful completion of the licensing examination process that results in the issuance of a license shall be completed within twenty-four (24) months based on the date of application; and,

(f) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and,

(g) upon approval by the bureau, the person may be fully licensed as an EMT-I for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau;

(h) the person may be granted a temporary license to practice as an EMT-I for a period of up to six (6) months or until failure of an EMT-I licensure examination, whichever occurs first; while under a temporary license, those applicants seeking full New Mexico licensure may be required to complete an out-of-state transition course approved by the bureau and complete the New Mexico EMT-I licensure examination; the temporary license also facilitates licensure of an out-of-state seasonal EMT-I and shall only be issued once in a twelve (12) month period, as determined by the bureau; in this case, the seasonal license is valid for six (6) months from the date of issue and may be issued again, but only once in every subsequent twelve (12) month period;

(i) temporary licensure commences on the issue date of the temporary license from the bureau;

(ii) a temporary license may be issued only upon application and payment of required fees;

(11) persons holding a temporary license shall be fully licensed when they have:

(a) successfully completed the New Mexico EMT-I licensure written and practical examination; and,

(b) remit payment of all required fees;

(12) upon failure of the initial state EMT-I examination or the expiration of the graduate or temporary licensure period, the applicant:

(a) if from out-of-state, may apply to the bureau in writing for a temporary license at the EMT-B level for up to sixty (60) days, provided the applicant is qualified to be licensed as an EMT-B in New Mexico;

(b) during this time the applicant may make application for full EMT-B licensure and will be evaluated based upon their credentials according to these rules; the application must be in writing;

(c) at the end of the 60 days, the applicant will no longer be licensed at any level unless evidence of meeting the requirements at some level has been submitted and approved.

H. Emergency Medical Technician Paramedic (EMT-P): All applicants applying to be licensed at the EMT-P level shall meet the following requirements:

(1) be eighteen (18) years old, and be of good character; and

(2) present, at a minimum, a high school diploma or GED; and

(3) be fully licensed as an EMT-B or EMT-I; and

(4) submit a completed bureau approved license application form; and

(5) provide evidence of current

bureau approved CPR certification; and

(6) present proof of current bureau approved training which meets or exceeds the current national standard for advanced cardiac life support (ACLS) on emergency cardiac care (ECC); and

(7) pay all examination and licensure fees as required by these rules.

(8) graduates of an accredited training program: applicants who have graduated after January 1, 2006 from a bureau approved, nationally accredited in-state or out-of-state EMS training program shall:

(a) present a certificate of completion from a nationally accredited EMT-P course completed at a bureau approved EMS training program or equivalent, nationally accredited out-of-state EMT-P training program as determined by the bureau; successful completion of the EMT-P training program must be accomplished within the previous twenty-four (24) months; and

(b) successfully complete the New Mexico EMT-P licensing examination; and

(c) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(d) all applicants who are graduates of a bureau approved EMS training program may apply for graduate licensing which allows them to work temporarily under supervision, as outlined in 7.27.2.8 NMAC;

(9) graduates of a non-accredited training program: applicants who have graduated from a non-accredited, out-of-state EMS training program after January 1, 2006 shall:

(a) submit a copy of the initial paramedic course completion certificate, if available, or identify the EMS training program where the individual graduated along with the date of graduation; the training program will be evaluated for recognition in accordance with Subsection B of 7.27.2.9 NMAC of these rules;

(b) successfully complete the New Mexico EMT-P licensing examination and other examinations as determined by the bureau; and

(c) meet all other general licensing requirements found in 7.27.2.8 of these rules;

(d) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(e) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months from the date of application or until failure of an

EMT-P equivalency examination, whichever occurs first;

(10) out of state applicants licensed or certified prior to January 1, 2006: applicants who are currently certified or licensed in another state or are certified with the national registry of EMTs prior to January 1, 2006 may apply for licensure as follows:

(a) submit documentation of current out-of-state certification or license, or national registry certification; and

(b) successfully complete the New Mexico EMT-P licensing examination, as determined by the bureau; and

(c) meet all other licensing requirements found in 7.27.2.8 NMAC of these rules; and

(d) upon approval by the bureau, the person may be fully licensed as an EMT-P for the remainder of the previous certification/licensure authority's certification/licensure period, as determined by the bureau; or

(e) the person may be granted a temporary license to practice as an EMT-P for a period of up to six (6) months or until failure of the New Mexico EMT-P licensing examination, if applicable;

(11) upon failure of the New Mexico EMT-P examination or expiration of the temporary or graduate license period, the following condition will apply:

(a) if previously New Mexico state licensed, the licensee shall maintain the original level of licensure (EMT-B or EMT-I), and the applicant may practice at that level until expiration of licensure; or

(b) if from out-of-state, the applicant may apply to the bureau in writing for temporary licensure at a lower level (EMT-B or EMT-I) for up to sixty (60) days, provided that the applicant is qualified to be licensed as an EMT-B or EMT-I in New Mexico;

(i) during this time the applicant may make application for full EMT-B or EMT-I licensure in accordance with these rules;

(ii) at the end of the sixty (60) days, the applicant will no longer be licensed at any level.

[7.27.2.9 NMAC - Rp, 7.27.2.9 NMAC, 1/01/2006]

7.27.2.10 LICENSURE

RENEWAL: New licensing renewal fees, as outlined in 7.27.2.12 NMAC, shall be effective July 1, 2006. Individuals renewing their New Mexico EMS provider's license shall submit a bureau approved refresher course completion certificate from an in-state or out-of-state training institution that is equivalent to the refresher course blueprints found in this section; or, use the alternative to a refresher course as outlined for each level of EMSFR and EMT in this

section. Carded courses, such as ACLS or PALS, received as part of a bureau approved refresher course shall not be used to fulfill any CE hour requirements.

A. Receipt of Licensure Renewal From the EMS bureau:

Licensing renewal is the responsibility of each individual licensee. If an individual licensee fails to notify the bureau of a change of address within one (1) year from the date of relocation, as determined by the bureau, a bad address fee may be assessed by the bureau. For individuals who have submitted their complete licensure renewal packet to the bureau in a timely manner, the bureau will review the renewal requests in the order they are received.

(1) If there is a delay in notification from the bureau about the status of the licensure renewal beyond the expiration of the license, the individual shall remain licensed until:

(a) notified by the bureau by certified, return receipt requested mail that the license application has been denied or the license expired without renewal; or

(b) they receive their license from the bureau.

(2) If an individual's renewal packet is incomplete, the individual shall be notified by the bureau by certified, return receipt requested mail.

(3) If an individual licensee is notified by certified mail that a renewal problem exists with their license, and the license has expired, the individual shall not remain licensed.

B. Renewal Deadlines:

Specific renewal requirements must be completed no later than the December 31 that occurs prior to licensure expiration. CPR and ACLS certifications are exempt from the December 31 deadline and must be current at the time of renewal. Renewal applications must be received by the bureau by the last day of February prior to expiration of licensure but may be postmarked and submitted by March 31 prior to expiration of licensure for a higher fee.

(1) The applicant may submit the complete renewal application to the bureau as soon as requirements are complete, but the complete renewal application shall be postmarked no later than the final month of licensure. A normal renewal fee is assessed for renewal applications postmarked prior to the final month of licensure.

(2) Renewal applications received during the final month of licensure will be accepted, but will be assessed a higher renewal fee due to the requirement for speedier processing.

(3) Applications for renewal of licensure shall be postmarked no later than the last day of licensure (March 31).

C. Mandatory Updates:

The bureau may require mandatory updates

to training in any given year of licensure. Mandatory updates may include required content hours during refresher courses, required continuing education, or mandatory classes.

D. Downgrading to a Lower Level of Licensure: EMS Personnel may petition the bureau to downgrade to a lower level of licensure if:

(1) they are in good standing at the current level of licensure; and

(2) the eligibility requirements have been met for the lower EMS level (i.e., current refresher course, CE, CPR, etc.);

(3) if the provider requests that the downgraded license be upgraded to the original level of licensure, the provider must meet the re-entry requirements to upgrade to the original level of licensure in accordance with Subsection L of 7.27.2.10 NMAC of these rules.

E. Waivers: The licensing commission may, for good cause shown, waive portions of these rules pertaining to licensure renewal pursuant to 7.27.2.13 NMAC of these rules. Persons requesting waivers for licensure renewal shall submit requests in writing to the EMS licensing commission, in care of the bureau.

F. Licensed Emergency

Medical Dispatcher (EMD): Renewal for a licensed EMD is required within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and must be current at the time of renewal. If the EMD is concurrently licensed as an EMT-B, EMT-I or EMT-P, the renewal dates for EMD licensure may be adjusted by the bureau to match the renewal dates for the EMT-B, EMT-I, or EMT-P license. The following requirements are necessary for a person to renew their EMD license:

(1) submit copies of course completion certificates or verification showing a minimum of twenty-four (24) contact hours of continuing education activity; of which at least twelve (12) hours shall be medical subjects/skills of bureau approved continuing education activity and twelve (12) hours of dispatch related subjects/skills, unless the EMD is also licensed at the EMT-B, EMT-I or EMT-P level; the EMD may then use those contact hours of continuing education activity obtained during the renewal period for the EMT-B, EMT-I or EMT-P licensure toward the medical renewal requirements; and

(2) provide evidence of current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of

CPR; and

(3) submit required application and payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

G. Licensed Emergency

Medical Dispatcher - Instructor: Renewal of a licensed EMD- instructor is required within each licensure period. Documentation must show that all renewal requirements have been completed before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and must be current at the time of renewal. The following requirements are necessary for a person to renew their EMD-I license:

(1) submit verification from a bureau approved EMD training program showing that the EMD- instructor is current and in good standing with the approved EMD training program; and

(2) submit documentation showing completion of all EMD continuing education renewal requirements; and

(3) submit a copy of current licensure at the EMT-B or higher level; and

(4) provide evidence of current bureau approved CPR certification; or, if physically unable to be certified for CPR, provide written documentation of current knowledge and practical applications of CPR; and

(5) submit the required application and payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

H. Emergency Medical

Services First Responder: Renewal of the EMSFR license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for a person to renew their license:

(1) submit a completed renewal application; and,

(2) submit documentation showing a minimum of eight (8) contact hours of bureau approved continuing education activity, of which two (2) contact hours shall consist of pediatric content; and,

(3) submit a copy of a course completion certificate from a bureau approved EMSFR refresher course that includes a minimum of sixteen (16) contact hours, as outlined in the refresher course blueprint below; or,

(a) preparatory 1 hour

(b) airway and ventilation 2 hours

(c) patient assessment 2 hours

(d) medical emergencies 4 hours

(e) trauma emergencies 4 hours

(f) special considerations 2 hours

(g) operations 1 hour

(4) as an alternative to a formal refresher course, submit a total of sixteen (16) contact hours of additional bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the basic life support level; and,

(5) provide evidence of current bureau approved CPR certification; and

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMSFR skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; and

(7) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

I. Emergency Medical

Technician Basic (EMT-B): Renewal of the EMT-B license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-B to renew their license:

(1) submit a completed renewal application; and

(2) submit documentation showing a minimum of twenty-four (24) contact hours of bureau approved continuing education activity, of which four (4) contact hours shall consist of pediatric content; and

(3) submit a copy of a course completion certificate from a bureau approved EMT-basic refresher course that includes a minimum of twenty-four (24) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory 1 hour

(b) airway and ventilation 2 hours

(c) patient assessment 3 hours

(d) medical emergencies 6 hours

(e) trauma emergencies 6 hours

(f) special considerations 4 hours

(g) operations 2 hours

(4) as an alternative to a formal refresher course, submit a total of twenty-four (24) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the basic life support level; and

(5) provide evidence of current bureau approved CPR certification; and

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-basic skills listed in 7.27.2.14 NMAC,

current scopes of practice, that require medical direction; and

(7) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules;

(8) applicants who have completed a bureau approved EMT-I course or completed appropriate sections of the EMT-I course, as determined by the bureau, may fulfill the refresher and continuing education requirement.

J. Emergency Medical

Technician Intermediate (EMT-I): Renewal of the EMT-I license is required within each licensure period. Documentation must show that all renewal requirements have been met on or before the December 31 that occurs prior to expiration of licensure. CPR certification is exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-I to renew their license:

(1) submit a completed renewal application; and

(2) submit documentation showing a minimum of thirty (30) contact hours of bureau approved continuing education activity, of which five (5) contact hours shall consist of pediatric content; and,

(3) submit a copy of a course completion certificate from a bureau approved EMT-intermediate refresher course that includes a minimum of twenty-four (24) contact hours, as outlined in the refresher course blueprint below; or

(a) preparatory 1 hours

(b) airway and ventilation 2 hours

(c) patient assessment 3 hours

(d) medical emergencies 6 hours

(e) trauma emergencies 6 hours

(f) special considerations 4 hours

(g) operations 2 hours

(4) as an alternative to a formal refresher course, submit a total of twenty-four (24) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the advanced life support level; and

(5) provide evidence of current bureau approved CPR certification; and

(6) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-intermediate skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction; persons who are not currently providing care through an EMS provider service and do not have a service medical director, may for good cause, petition the bureau for an exception of this requirement; and

(7) submit payment of all licensure renewal fees as required by 7.27.2.12

NMAC of these rules;

(8) applicants who have completed a bureau approved EMT-P course or completed appropriate sections of the EMT-P course, as determined by the bureau, may fulfill the refresher and continuing education requirement.

K. Emergency Medical Technician Paramedic (EMT-P): Renewal of the EMT-P license is required within each licensure period. Documentation must show that all renewal requirements have been completed on or before the December 31 that occurs prior to the expiration of licensure. CPR and ACLS certifications are exempt from the December 31 deadline and shall be current at the time of renewal. The following requirements are necessary for an EMT-P to renew their license:

(1) submit a completed renewal application; and

(2) submit documentation showing a minimum of twenty-four (24) contact hours of bureau approved continuing education activity at any level, of which six (6) contact hours shall consist of pediatric content; and

(3) submit a copy of a course completion certificate from a bureau approved EMT-paramedic refresher course that includes a minimum of forty-eight (48) contact hours, as outlined in the refresher course blueprint below; or

- (a) preparatory 3 hours
- (b) airway and ventilation 4 hours
- (c) patient assessment 4 hours
- (d) medical emergencies 18 hours
- (e) trauma emergencies 10 hours
- (f) special considerations 6 hours
- (g) operations 3 hours

(4) as an alternative to a formal refresher course, submit a total of forty-eight (48) contact hours of bureau approved CE that adheres to the refresher course blueprint above; the medical content shall be at the advanced life support level; and

(5) provide a statement of verification, signed by the service medical director, that the applicant is competent in all EMT-paramedic skills listed in 7.27.2.14 NMAC, current scopes of practice, that require medical direction. Persons who are not currently providing care through an EMS provider service and do not have a service medical director, may for good cause, petition the bureau for an exception of this requirement; and

(6) submit proof of current bureau approved training which meets or exceeds the current national standards for advanced

training which is equivalent to or exceeds the advanced cardiac life support (ACLS) certification on emergency cardiac care; and

(7) provide evidence of current bureau approved CPR certification; and

(8) submit payment of all licensure renewal fees as required by 7.27.2.12 NMAC of these rules.

L. Late Renewal for all Categories: The bureau provides three (3) methods for expired licensees to regain their licensure; reinstatement, re-entry, and re-licensure.

(1) **Reinstatement:** Those persons who have completed the renewal requirements on or before the December 31 cutoff, but failed to renew licensure by March 31, may renew between April 1 and May 31 of the expiration year. A complete renewal application for reinstatement must be received at the bureau by May 31. Paperwork postmarked after March 31 will be assessed with an additional late fee. See Fees, 7.27.2.12 NMAC of these rules.

(2) **Re-entry:** A person whose license is expired, who does not meet the circumstances of Paragraph (1) of Subsection L of 7.27.2.10 NMAC above, but whose date of expiration of the previously held certification or license is less than three (3) years, may re-enter EMS at the previously held level if the person left EMS in good standing and successfully completes the following:

- (a) complete a bureau approved refresher training course at the appropriate level (except EMD or EMD-I); and
- (b) provide evidence of current bureau approved BLS CPR training; and
- (c) successfully complete the New Mexico licensing examination, at the appropriate provider licensure level (maximum of two (2) examination attempts allowed), if applicable; and
- (d) if EMD or EMD-I applicant, provide verification of a minimum of twenty-four (24) contact hours of bureau approved continuing education activity, of which twelve (12) hours shall be medical subjects/skills and twelve (12) hours shall be dispatch related subjects/skills of bureau approved continuing education activity; and
- (e) if an EMT-P applicant, provide evidence of current advanced cardiac life support training; and
- (f) submit required application and payment of licensure fees as identified for the appropriate level in 7.27.2.12 NMAC of these rules.

(3) **Re-licensure:** A person whose license has been expired for more than three (3) years from the date of expiration shall be considered an initial licensure applicant. To become licensed, a person must complete the requirements of 7.27.2.9 NMAC of these rules.

M. Expiration of

Licensure: All New Mexico EMS personnel, whose licensure expires on March 31 of any given year, shall be removed from the New Mexico active registry of emergency medical services personnel on the first business day of April of that given year. The bureau will send a notice to the address of record notifying the former licensee of removal from the New Mexico registry of EMS personnel.

N. Continuing Education: Continuing education (CE) credit may be granted for any training that has been approved in advance by the bureau. All individuals or EMS services wishing to grant continuing education credit to licensed EMD's, EMD-I's, EMSFRs and EMT's in New Mexico shall submit the appropriate documentation to the bureau at least thirty (30) days in advance. CE's submitted to the bureau after training has been completed is discouraged and will be reviewed for approval or disapproval on a case-by-case basis. Application for continuing education approval shall be made utilizing the bureau's "notification of intent to conduct a continuing education program" application form available from the bureau. More detailed information about New Mexico's EMS continuing education program may be found in the "EMS continuing education user's guide", available from the bureau.

(1) **Purpose:** Continuing education is designed to meet three main objectives:

- (a) to provide exposure to new and current trends in the area of patient care; and
- (b) to review areas of patient assessment and management that are not used on a frequent basis; and
- (c) to meet licensure renewal requirements.

(2) **Continuing Education Categories:** The EMS bureau has adopted the CE category designations published by the national highway and traffic safety administration (NHTSA) and utilized by many states and national EMS organizations. A more detailed explanation of these categories can be found in the "EMS continuing education user's guide" available from the bureau. These categories apply only to formal and alternative refresher courses. The CE categories are:

- (a) preparatory topics: general topics include roles and responsibilities, well-being of the EMT, injury prevention, medical/legal issues, ethics, anatomy/physiology, principles of pathophysiology, principles of pharmacology, IV therapy and medication administration, therapeutic communications;
- (b) airway and ventilation;
- (c) patient assessment: general topics include history taking, techniques of

the physical examination, patient assessment, clinical decision making, EMS communications, documentation;

(d) medical emergencies: general topics include pulmonary, cardiology, neurology, endocrinology, allergies and anaphylaxis, gastroenterology, urology/renal, toxicology, hematology, environmental conditions, infectious and communicable diseases, behavioral and psychiatric disorders, gynecology, obstetrics;

(e) trauma emergencies: general topics include kinematics, blunt trauma, penetrating trauma, hemorrhage and shock, soft tissue trauma, burns, head and facial trauma, spinal trauma, thoracic trauma, abdominal trauma, musculoskeletal trauma;

(f) special considerations: general topics include neonatology, pediatrics, geriatrics, abuse and neglect, patients with special challenges, acute interventions for the home health care patient;

(g) operations: general topics include ambulance operations, medical incident command, rescue awareness and operations, hazardous materials incidents, crime scene awareness.

(3) Forms of Continuing Education: The following forms of continuing education are currently recognized by the bureau. The bureau reserves the right to approve additional forms of continuing education as necessary. More detailed information may be found in the "EMS continuing education user's guide" available from the bureau:

(a) classroom instruction: standard instructor-student relationship in the classroom or field setting.

(b) pre-approved courses: this list of national and statewide recognized courses are pre-approved for CE credit. Individuals completing any of these courses need only to submit their course completion certificate or card when renewing their licenses. Courses that are approved by CECBEMS are pre-approved for credit in New Mexico.

(c) EMS related college courses: credit may be awarded to individuals who are attending college courses relevant to EMS. Individuals who are interested in receiving credit should submit a copy of their unofficial student transcript and course syllabus.

(d) EMS video presentations: EMS video presentations may be used for continuing education. In order to do so, the "notification of Intent to conduct a continuing education program" application form must be submitted, along with a list of the videos intended for presentation with their corresponding copyright dates. No more than one-half of the CE requirement for any given level may be accomplished by EMS video presentations.

(e) state skill evaluator participation: a maximum of twenty (20) hours of credit may be used for skill evaluation at state licensing examination sites; these credits cannot be applied toward refresher course blueprint requirements;

(f) teaching bureau approved courses: licensed individuals who teach bureau approved courses may receive the same number of CE hours as students who are taking the program; refer to the "EMS continuing education user's guide" for a more complete description;

(g) field or clinical preceptorship: a maximum of twenty (20) hours of additional CE may be allowed for EMS preceptor activities; documentation of preceptor activities must be on letterhead from an approved New Mexico EMS training institution or EMS service director; these credits cannot be applied toward refresher course blueprint requirements;

(h) distributive learning programs: a list of recognized internet, web-based and EMS professional journal CE programs can be found in the "EMS continuing education user's guide"; a maximum of twelve (12) hours of credit may be acquired for the additional CE component.

(4) Record Keeping: Once approval of a CE program is obtained and the course is presented, records of attendance must be maintained. The bureau may audit the CE records of an approved CE program. Attendance records with original signatures of course participants and a copy of any course presentation material must be kept for a minimum of thirty-six (36) months by the service, for bureau audit purposes.

(a) In order for participating EMS personnel to receive credit, each individual shall be given a certificate, letter of attendance/completion, or copy of course attendance roster and advised to retain it until their licensure renewal. Many EMD Agencies (EMDA) and EMS services have computerized records of their personnel concerning CE. The EMS bureau will recognize CE summary documentation, on letterhead, from EMDA or EMS service directors, training coordinators, medical directors, or CE coordinators with appropriate original signatures.

(b) Course completion letters, certificates and course rosters shall contain the following information:

(i) location and date of the CE program;

(ii) title of the class or course;

(iii) number of actual contact hours (half hour increments are acceptable);

(iv) CE category;

(v) name of participant;

(vi) CE coordinator's name with designation "CE coordinator" placed after the name;

(vii) signature of CE coordinator;

(viii) the statement: "reviewed and approved by the New Mexico EMS bureau for continuing education";

(ix) EMS bureau approval number.

(5) CE Audits: For EMS services and personnel, the bureau may periodically perform audits of CE programs. These audits are usually provided as a way for services to evaluate their current program, identify areas in which the program excels, as well as areas that may be problematic. The following types of CE audits may be conducted by the bureau:

(a) CE course audit: this audit evaluates the actual class or course being conducted; the purpose of this audit is to provide written feedback to the instructor on presentation, content and participant evaluations conducted at the end of the class; this audit is usually unannounced;

(b) CE recordkeeping audit: this audit evaluates the CE program sponsor recordkeeping process; the bureau may audit refresher course certificates for compliance with the refresher course blueprint; records of prior classes or courses conducted are inspected for completeness and feedback is provided to the CE program sponsor that identify areas for improvement; CE program sponsors will be given at least five (5) days advance notification of these audits; records that will be inspected include:

(i) original copies of attendance rosters with the signatures of course participants; and

(ii) course presentation materials/outlines or learning objectives; and

(iii) handouts that were given to participants; and

(iv) any evaluation tools, including written exams or practical skill forms; and

(v) CE approval letter or approval numbers;

(c) CE complaint audit: this audit is a preliminary investigation conducted by the EMS bureau based on a complaint concerning falsification of the CE process. [7.27.2.10 NMAC - Rp, 7.27.2.10 NMAC, 1/01/2006]

7.27.2.11 IDENTIFICATION OF EMS PERSONNEL: Licensed EMD's, EMD- I's, EMSFR's, and EMT's will be issued: one license certificate, one license wallet card, and one uniform patch (if available).

A. The bureau shall charge a reasonable fee for replacement of lost cards or certificates. The bureau shall also charge a reasonable fee for additional uniform patches, pursuant to 7.27.2.12 NMAC of these rules.

B. Licensed EMD's, EMD-I's, EMSFR's, and EMT's shall carry their current New Mexico state license wallet card, or bureau approved equivalent form of identification, while participating in a patient care situation. All EMS personnel must present upon demand, proof of licensure.

C. Licensed EMD's, EMD-I's, EMSFR's, and EMT's shall promptly notify the bureau of any changes of name, address or EMS employment/affiliation status.

[7.27.2.11 NMAC - Rp, 7.27.2.11 NMAC, 1/01/2006]

7.27.2.12 FEES:

A. Examination, Licensure, Renewal and Assorted Fees: The bureau shall charge reasonable fees for the examination, licensure, and renewal of licensed EMS providers in New Mexico, according to the following schedule. For persons taking national registry examinations, additional fees will be required.

(1) In-state: includes individuals who are residents of the state of New Mexico or who have completed an EMS course of instruction at a New Mexico EMS training program.

(2) Out-of-state: includes individuals who are residents of another state or who have completed an EMS course of instruction at an out-of-state EMS training program.

B. Initial license fees (testing and re-license):

DESCRIPTION	IN-STATE APPLICATION FEE	OUT-OF-STATE APPLICATION FEE	OUT-OF-STATE TRANSITION COURSE FEE
Initial license fees (testing and re -license)			
Licensed EMD	\$25.00	\$50.00	
Licensed EMD -Instructor	\$35.00	\$70.00	
Licensed EMS First responder	\$25.00	\$50.00	\$25.00
Licensed EMT -Basic	\$65.00	\$130.00	\$50.00
Licensed EMT -Intermediate	\$75.00	\$150.00	\$75.00
Licensed EMT -Paramedic	\$85.00	\$170.00	

C. National Registry (additional state examination fee):

DESCRIPTION	IN-STATE APPLICATION FEE	OUT-OF-STATE APPLICATION FEE
National Registry (additional state examination fee)		
First responder examination fee	\$10.00	\$50.00
EMT-Basic examination fee	\$25.00	\$75.00
EMT-Intermediate examination fee	\$75.00	\$150.00
EMT-Paramedic examination fee	\$100.00	\$200.00

D. Examination re-test fees, which may be assessed for same day retest:

DESCRIPTION	IN-STATE	OUT-OF-STATE
Examination re -test fees (state & national registry), which may be assessed for same day re -test		
First responder examination	\$25.00	\$25.00
EMT-Basic examination	\$30.00	\$30.00
EMT-Intermediate written/practical	\$35.00	\$35.00
EMT-Paramedic written/practical	\$40.00	\$40.00

E. Licensure renewal fees:

DESCRIPTION	FEE TYPE	FEE
Licensure renewal fees		
Licensed EMD	Normal Fee	\$20.00
	March renewal fee	\$60.00
Licensed EMD -Instructor	Normal Fee	\$25.00
	March renewal fee	\$75.00
Licensed EMS First Responder	Normal Fee	\$20.00
	March renewal fee	\$60.00
Licensed EMT -Basic	Normal Fee	\$30.00
	March renewal fee	\$90.00
Licensed EMT -Intermediate	Normal Fee	\$40.00
	March renewal fee	\$120.00
Licensed EMT -Paramedic	Normal Fee	\$50.00
	March renewal fee	\$150.00

F. Reinstatement fees:

DESCRIPTION	FEE
Reinstatement fees	
Licensed EMD	\$120.00
Licensed EMD -Instructor	\$150.00
Licensed EMS First Responder	\$120.00
Licensed EMT -Basic	\$180.00
Licensed EMT -Intermediate	\$240.00
Licensed EMT -Paramedic	\$300.00

G. Re-entry fees - same as March renewal fees:

DESCRIPTION	FEE
Re-entry fees - same as reinstatement fees	
Licensed EMD	\$60.00
Licensed EMD -Instructor	\$75.00
Licensed EMS First Responder	\$60.00
Licensed EMT -Basic	\$90.00
Licensed EMT -Intermediate	\$120.00
Licensed EMT -Paramedic	\$150.00

H. Miscellaneous fees:

Miscellaneous fees	FEE
Additional patches -each	\$3.00
Replacement licensure card -each occurrence	\$10.00
Bad check fee -each occurrence	\$20.00
National Healthcare Practitioner Query fee - each occurrence as determined by the bureau	\$15.00
Bad address fee - each occurrence, as determined by the bureau	\$20.00

I. Use of Fees: Fees collected by the bureau under these rules shall be used expressly for licensing operations. This includes but is not limited to payment of approved EMS skill evaluators, for their participation at state licensing examinations; examination and licensing supplies and equipment, including processing equipment; facility rental costs associated with the examination and licensing process; processing and handling of licenses; operation of examination sites; expenses encountered in the enforcement of these rules.

J. Payment of Fees: State fees shall be made payable to the bureau by check, money order or other bureau approved method of payment. Licensure and examination fees are due and payable at the time of licensure application. Licensure applications will not be processed until payment of the required fees.

K. Waiver of Fees: Applicants for licensure under these rules who, for good cause, are unable to pay the licensure fees may petition the bureau for a waiver. Applications for fee waiver under these rules shall be submitted to the bureau in the form of a writ-

ten letter, and shall document the exact nature of the applicant's inability to pay. Waiver requests shall be submitted to the EMS program manager or designee for approval.

[7.27.2.12 NMAC - Rp, 7.27.2.12 NMAC, 1/01/2006]

7.27.2.13 ENFORCEMENT:
A. EMS Licensing

Commission:

(1) **Statutory Basis:** The emergency medical services licensing commission is established pursuant to Section 24-10B-5.1 NMSA 1978 of the act.

(2) **Duties:** The duties of the commission are to:

(a) provide a forum for the receipt of public comment regarding emergency medical services licensing matters; and

(b) oversee the bureau's licensing and enforcement functions; and

(c) receive complaints, direct investigations and authorize the initiation of actions by the bureau regarding contemplated refusal to grant initial licensure and for disciplinary actions against licensees; and

(d) grant waivers, for good cause shown, of regulations pertaining to licensure renewal.

(3) **Organization:** Members of the commission are appointed by the secretary as provided by law.

(a) Commission members shall serve until their successors have been appointed by the secretary.

(b) In the event of a vacancy on the commission by resignation or removal, the bureau shall immediately notify the secretary so as to expedite the appointment of a new commission member. The secretary shall appoint such vacancies.

(c) The commission may recommend to the secretary removal of any commission member for the following reasons:

(i) failing to attend or otherwise participate in two (2) consecutive meetings without a valid reason; or

(ii) any other good cause.

(d) The commission shall elect a chair and vice-chair annually. The term of office begins with the meeting at which the officer is elected.

(e) The bureau shall serve as staff for the commission.

(4) **Commission meetings:** The commission shall meet as needed, but not less than semi-annually.

(a) Commission meetings for receipt of public comment regarding emergency medical services licensing functions and oversight of the bureau's licensure function shall be subject to the Open Meetings Act, Section 10-15-1, et seq., NMSA 1978.

(b) Meetings pertaining to the

issuance, suspension, renewal or revocation of a license, or other personnel matters, are closed meetings as provided by the Open Meetings Act.

(c) A meeting notice resolution, consistent with the provisions of the Open Meetings Act, shall be adopted by the commission and shall be reviewed in November of each year at a regularly scheduled meeting of the commission.

(d) Minutes of meetings shall be taken and maintained in accordance with the Open Meetings Act.

(5) **Receipt of public comment:** There shall be an opportunity for receipt of public comment regarding licensure matters, in writing or orally, at each open commission meeting.

(a) Written public comment intended for consideration by the commission shall be mailed to the bureau. The comments must include the person's name, address, and telephone number, if available. Unidentified comments may or may not be considered by the commission.

(b) The commission, upon receipt of public comments, may make an appropriate recommendation to the bureau to take action based on those comments.

(6) **Oversight:** During each regularly scheduled meeting, the bureau will provide a report of its licensure functions to the commission. Commission members may, at any time, request information about licensure functions from the bureau.

B. Complaint/incident procedures: Any person may communicate a written complaint or knowledge of an incident to the bureau or the commission.

(1) When the bureau has knowledge of a complaint that may affect a person's license, it shall notify the chair of the commission as soon as practicable.

(2) Similarly, when the commission has knowledge of a complaint or incident affecting licensure, it shall notify the bureau.

(3) Other complaints, which would not affect licensure, will be directed to, and examined by the bureau.

(4) The bureau shall communicate to the chair or designee its opinion as to whether or not an investigation of the complaint should be initiated.

(5) Upon knowledge of a complaint, the chair, or designee, after consultation with other members of the commission, as feasible, shall authorize that an investigation be conducted.

(6) The chair or designee shall direct the course of the investigation through periodic communication with the bureau as necessary.

(7) If an investigation indicates that the complaint may affect a person's license, the licensee shall be notified that the bureau is conducting an investigation,

unless extenuating circumstances reasonably preclude notification.

(a) At the conclusion of the bureau's investigation, the bureau shall report its findings to the commission in a closed meeting at which a majority of commission members participate, either in person or by means of a conference telephone or other similar communications equipment.

(b) The commission, after consideration of the bureau's report, may authorize the initiation of an action by the bureau regarding contemplated refusal to grant initial licensure, or for disciplinary action against a licensee, by a majority vote of commission members participating in the closed meeting. The commission may immediately authorize a cease and desist order or immediate suspension of license, subject to expedited hearing rights as outlined in Paragraph (5) of Subsection G of 7.27.2.13 NMAC, if it determines that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible.

(c) The chair of the commission may immediately authorize the initiation of an action by the bureau regarding contemplated refusal to grant initial licensure, or for disciplinary action against a licensee, without consulting the other members of the commission. This immediate action may be used if the chair makes a good faith judgment that the health and safety of the public would be jeopardized unless the bureau takes action as soon as possible. Actions may include cease and desist orders or immediate suspension, subject to expedited hearing rights pursuant to Paragraph (5) of Subsection G of 7.27.2.13 NMAC of these rules. If the chair authorizes the initiation of an action by the bureau, the bureau shall notify each commission member in writing of such action within ten (10) working days of the initiation of the action.

(d) Upon receipt of authorization from the commission to initiate an action, the bureau may deny, suspend or revoke licensure or take other disciplinary action, in accordance with the provisions of the Act, Section 24-10B-5.B.(2), NMSA 1978 and the Uniform Licensing Act, Sections 61-1-1, et seq., NMSA 1978.

C. Conduct of Investigations: Investigations shall normally be conducted by the bureau.

(1) **Preliminary investigations:** When the bureau receives information that might form the basis for disciplinary action against a person, it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine for the commission whether justification exists for the commission to authorize the bureau to initiate an action or to conduct a formal investigation.

The results of the preliminary investigation will be presented to the commission.

(2) Formal investigations: Formal investigations are authorized by the commission for the purpose of obtaining additional information to allow the commission to determine if it will authorize the bureau to initiate an action. The results of the formal investigation will be presented to the commission. Notice will be given to the person who is the subject of the formal investigation unless extenuating circumstances exist which would reasonably preclude notification.

D. Subpoena Authority:

In accordance with Subsection C of Section 24-10B-5.1 NMSA 1978 of the EMS Act and Subsection A of Section 61-1-4 of the Uniform Licensing Act, the EMS licensing commission or the bureau, pursuant to the commissions authorization may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses, and the production of books, records, papers or other objects necessary and proper for the purposes before it, and may take sworn statements of witnesses, including parties.

E. Waivers: The commission, upon good cause or for extenuating circumstances shown by a licensee, may grant a waiver of a specific regulation or regulations pertaining to licensure renewal for that licensee.

(1) A licensee shall demonstrate good cause to the commission by submitting written justification that identifies any extenuating circumstances, to the bureau. The licensee shall include any reasonable supporting documentation to relevant to the request.

(2) The bureau shall distribute the submitted written justification and supporting documentation to the members of the commission prior to their next meeting.

(3) The commission, as soon as practicable, shall determine if good cause exists to grant a waiver by a majority vote of commission members meeting in a closed meeting. To accomplish this, the commission shall evaluate the documentation and, if necessary, review other pertinent documentation requested from the licensee.

(4) The commission may also meet with the licensee at a closed meeting of the commission prior to rendering its decision as to whether good cause exists to grant a waiver.

(5) If the commission grants the waiver to the licensee, it shall direct the bureau to take appropriate action to implement the terms and conditions of the waiver.

(6) A licensee applying for a waiver shall be notified by the bureau of the commission's decision in writing within

twenty (20) calendar days of receipt of the commission's decision.

(7) The chair or his designee, with a recommendation from the bureau, may authorize a temporary waiver for licensure renewal, where they feel it may be justified, i.e., loss of employment, pecuniary interests, etc., subject to subsequent commission review and approval.

F. Impaired Practitioner

Program: An EMT who voluntarily self-identifies to the bureau or the impaired practitioner committee that he is experiencing a physical or mental impairment shall be considered for the impaired practitioner program ("diversion program"). Consideration may not result in participation in the diversion program. Also, any impaired-EMT who the bureau, with the advice of the commission, determines may benefit from the impaired practitioner program may be referred to the impaired practitioner committee.

(1) The bureau, with the advice of the commission, may appoint an impaired-EMT rehabilitation committee to organize and administer a program that will:

(a) serve as a diversion program to which the bureau may refer licensees in lieu of, or in addition to, other disciplinary action taken by the bureau under these regulations; and

(b) be a source of referral for EMT's who, on a voluntary basis, desire to avail themselves of treatment for behavioral health based or chemical-dependence impairments.

(2) The impaired practitioner committee shall be composed as a minimum of:

(a) one bureau staff member;

(b) one regional director;

(c) one commission member;

(d) one mental health specialist;

(e) one physician.

(3) The impaired practitioner committee shall:

(a) arrange evaluations for EMT's who request participation in the diversion program;

(b) review and designate treatment facilities and services to which EMT's in the diversion program may be referred;

(c) receive and review information concerning the status and progress of participants in the diversion program;

(d) publicize the diversion program in coordination with EMS professional organizations and the bureau;

(e) prepare and provide reports as needed to the bureau and the commission.

(4) Each EMT entering the diversion program shall be informed of the procedures applicable to the diversion program, of the rights and responsibilities associated with participation in the diversion

program and of the possible consequences of failure to participate in the diversion program. Failure to comply with any treatment requirement of the diversion program may result in termination of the diversion program participation. The bureau shall report termination of diversion program participation to the commission. Participation in the diversion program shall not be a defense against, but may be considered in mitigating any disciplinary action authorized by the commission and taken by the bureau. The commission is not precluded from authorizing the bureau to commence a disciplinary action against an EMT who is participating in the diversion program or has been terminated from the diversion program.

G. Denial, Suspension, and Revocation: A license may be denied, suspended, or revoked in accordance with the following:

(1) upon authorization by the commission, the bureau may suspend, revoke, or refuse to issue any license, or take other disciplinary action, in accordance with the provisions of the EMS Act, Subsection B, Section 24-10B-5, NMSA 1978 and the Uniform Licensing Act, Section 61-1-1, et seq., NMSA 1978, for any of the reasons outlined below;

(2) if final disciplinary action is taken against a licensed EMS provider by the bureau, upon authorization from the commission, the bureau may publish the action in a periodical or other medium that has statewide distribution;

(3) grounds for denial, suspension, or revocation are:

(a) misconduct in obtaining licensure;

(b) fraud, deceit, misrepresentation in obtaining licensure, including, but not limited to, cheating on an examination or attempting to subvert the initial or renewal licensing process;

(c) unprofessional conduct, to include but not limited to, the following:

(i) dissemination of a patient's health information to individuals not entitled to such information and where such information is protected by law from disclosure;

(ii) falsifying or altering patient records or personnel records;

(iii) misappropriation of money, drugs or property;

(iv) obtaining or attempting to obtain any fee for patient services for one's self or for another through fraud, misrepresentation, or deceit;

(v) aiding, abetting, assisting or hiring an individual to violate the EMS Act or these duly promulgated rules;

(vi) failure to follow established procedure and documentation

regarding controlled substances;

(vii) failure to make or keep accurate, intelligible entries in records as required by law, policy and standards for the practice of pre-hospital emergency care;

(viii) failure to report an EMS provider who is suspected of violating the New Mexico Emergency Medical Services Act or these rules;

(ix) intentionally engaging in sexual contact with or toward a patient;

(d) conviction of a felony or misdemeanor, or conviction of a misdemeanor involving abuse, neglect, exploitation, or moral turpitude, as shown by a certified copy of the record of the court conviction;

(e) negligence in the delivery of emergency medical services to include, but not limited to:

(i) practicing outside the standard of care, scope of licensure or without appropriate medical direction;

(ii) malpractice;

(iii) incompetence, in performing pre-hospital emergency medical functions, whether direct patient care or the administration/management of that care, an EMS provider is under legal duty to possess and to apply the knowledge, skill and care that is ordinarily possessed and exercised by other EMS providers of the same licensure status and required by the generally accepted standards of the profession; the failure to possess or to apply to a substantial degree such knowledge, skill and care constitutes incompetence for purposes of disciplinary proceedings; it shall not be necessary to show that actual harm resulted from the act or omission or series of acts or omissions, so long as the conduct is of such a character that harm could have resulted to the patient or to the public;

(iv) patient abandonment: patient abandonment occurs when the EMS provider has accepted the patient assignment thus establishing a provider-patient relationship and then severs the relationship without giving reasonable notice to a qualified person who can make arrangements for the continuation of care;

(f) unauthorized disclosure of medical or other confidential information;

(g) physical or mental incapacity which could result or has resulted in performance of emergency medical service duties in a manner which endangers the health and safety of the patient or others;

(h) any demonstrated pattern of alcohol or other substance abuse; or any single instance of alcohol or substance abuse in the performance of emergency medical services duties;

(i) failure to successfully complete the impaired practitioner program; or failure to meet the terms and conditions of an impaired practitioner agreement;

(j) failure to meet licensure requirements;

(k) dispensing, administering, distributing or diversion of controlled substances, other than those authorized in the scope of practice, as defined in the New Mexico Controlled Substance Act, Section 30-31-1, et seq., NMSA 1978;

(l) failure to report revocation, suspension, denial, or other adverse actions taken in any other state or jurisdiction affecting the ability to practice emergency medical services;

(m) misrepresentation of the level of licensure or certification;

(n) performing duties as a licensed EMT without being licensed by the bureau to perform the authorized scope of practice for a level of licensure, including practicing after expiration of a license;

(o) any false, fraudulent, or deceptive statement in any document connected with the practice of emergency medical services, including, but not limited to, documents associated with:

(i) initial licensure;

(ii) renewal licensure;

(iii) licensure certificates, wallet cards; or

(iv) continuing education;

(p) failure to cooperate with an investigation, including but not limited to, failure to furnish the commission or bureau with information requested, or to appear for an interview as requested;

(q) inappropriate conduct or negligence by a licensed EMT who is also a registered instructor coordinator;

(r) failure to comply with a judgment and order for child support issued by a district or tribal court as defined in the Parental Responsibility Act (Laws of 1995, Chapter 25);

(4) procedures for enforcement of the Parental Responsibility Act:

(a) the New Mexico human services department (HSD) shall issue to the bureau a certified list of obligor's (meaning persons who have been ordered to pay child support pursuant to a judgment and order for support issued by a district or tribal court) not in compliance with their judgment and order of support;

(b) upon determination by the bureau that the name and social security number of an applicant for licensure, a licensed person, or licensee, appears on the certified list, the bureau shall require that applicants for licensure:

(i) provide a statement of compliance from HSD to the bureau no later than forty eight (48) hours prior to scheduled attendance at a state EMS examination site; or

(ii) provide a statement of compliance from HSD to the bureau no

later than the close of business, sixty (60) days from the date of the letter of notification; or

(iii) if the applicant fails to provide a statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to deny the application;

(iv) that persons currently licensed shall provide the bureau with a statement of compliance from HSD by the earlier of the application for licensure renewal or a specified date not to exceed sixty (60) days;

(v) if the licensed person fails to provide the statement of compliance, the bureau shall be authorized by the commission to issue a notice of contemplated action to take appropriate action;

(c) upon authorization by the commission to issue a notice of contemplated action, the bureau shall serve upon an applicant for licensure or licensee a notice of contemplated action in accordance with the Uniform Licensing Act stating that:

(i) the bureau has grounds to take such action, and that the bureau shall take such action unless the applicant or licensed person:

(ii) mails a letter (certified mail, return receipt requested) within 20 days after service of the notice requesting a hearing; or

(iii) provides the bureau, within thirty (30) days of receipt of the notice of contemplated action, a statement of compliance from HSD; and

(iv) if the applicant or licensed person disagrees with the determination of non-compliance, or wishes to come into compliance, the applicant or licensed person should contact the HSD child support enforcement division;

(d) in any hearing under this section, relevant evidence is limited to the following:

(i) a statement of non-compliance is conclusive evidence that requires the bureau to take appropriate action, unless:

(ii) the applicant or licensee provides the bureau with a subsequent statement of compliance, which shall preclude the bureau from taking any further action under this section;

(iii) when an action is taken against an applicant or licensee solely because the applicant or licensed person is not in compliance with a judgment and order for support, the order shall state that the application, license shall be reinstated upon presentation to the bureau of a subsequent statement of compliance;

(e) the bureau may also include in the order any other conditions necessary to comply with its requirements for reapplication and re-issuance of licensure, including,

but not limited to requiring a surcharge fee of fifty dollars (\$50), in addition to any other applicable fees;

(5) right to a hearing: in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1, et seq., NMSA 1978, every applicant or person licensed, shall be afforded notice and opportunity for a hearing, before the department shall have authority to take action, the effect of which would be to deny permission to take an examination for licensure for which application has been duly made, or to deny, suspend, or revoke a certification or license, or take other disciplinary action; exception:

(a) right to expedited hearing for an immediate suspension of a persons license: the person whose license is immediately suspended may request a hearing before a hearing officer appointed by the secretary to contest the action, by mailing a certified return receipt letter addressed to the bureau within twenty (20) days after service of the notice;

(b) expedited hearing for a person whose license has been immediately suspended: upon receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico, within twenty (20) working days of receipt of the timely request for a hearing.

(6) records management: a licensing record is maintained for every licensed EMT in New Mexico; any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act; if the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigatory material;

(a) confidentiality: the commission and the bureau will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner; if the commission authorizes the bureau to initiate an action, all records not exempt from disclosure under the Inspection of Public Records Act, Sections 14-2-1, et seq., NMSA 1978, will be placed in the licensee's licensing record, if one exists;

(b) records confidentiality: any files or records in the possession of the bureau, a regional office or a provider containing identifying information about individuals requesting or receiving treatment or other health services and any unsubstantiated complaints received by the bureau regarding any provider shall be confidential and not subject to public inspection; such files, records and complaints may be subject to subpoena for use in any pending cause, in any administrative proceeding, or in any of the courts of this state, unless otherwise

provided by state or federal law.

H. Enforcement of Training Standards.

(1) Process for Non-Compliance: The bureau will make every attempt to resolve non-compliance of training standards at the lowest level possible. The following process shall be utilized:

(a) the bureau will notify the approved New Mexico training program, in writing, of any suspected or reported non-compliance of training standards received by complaint, report or course trends;

(b) the approved New Mexico training program will provide a plan to correct items of non-compliance and will submit the plan to the bureau in writing within thirty (30) days;

(c) the bureau will re-evaluate the plan and progress reports for compliance of the training standards in three (3) month increments until the problem is resolved;

(d) if the bureau determines that non-compliance has not been adequately resolved, the bureau may initiate an enforcement action against the training program or the licensed EMT who is an instructor-coordinator.

(2) Complaint/Incident Procedures: Any person may communicate a complaint or knowledge of an incident to the bureau. Complaints shall be submitted in signed written form to the bureau. The bureau may begin an investigation if there is sufficient cause.

(a) When a complaint is received by the bureau, written acknowledgment shall be made within ten (10) working days and the bureau staff shall decide whether or not a preliminary or formal investigation of the complaint shall be initiated.

(b) Approved New Mexico EMS training programs being formally investigated shall receive written notification within ten (10) working days after a decision is made to begin a formal investigation.

(c) At the conclusion of the bureau's formal investigation, the bureau may report its findings to the investigated training program in written form. If the bureau investigation warrants an enforcement action, the training program will be given a notice of contemplated action.

(d) If no investigation is warranted, the training program or person filing a complaint will be notified, as determined by the bureau.

(3) Investigations: The bureau shall normally conduct preliminary and formal investigations.

(a) Preliminary investigations: when the bureau receives information that forms the basis for an enforcement action, it shall begin a preliminary investigation. This is a fact finding, information gathering investigation that will attempt to determine

for the bureau whether justification exists to initiate an action or to conduct a formal investigation.

(b) Formal investigations: formal investigations are for the purpose of obtaining additional information to allow the bureau to determine if it will initiate an action. Notice will be given of the formal investigation, unless extenuating circumstances exist which would reasonably preclude notification.

(c) Confidentiality: the bureau will take every precaution to insure that preliminary and formal investigations are conducted in a confidential manner.

(d) Records: an official record is maintained for every approved New Mexico EMS training program. If the bureau begins a preliminary or formal investigation, a separate confidential record will be created containing all investigation material. If the bureau initiates an action, all records not exempt from disclosure under the Inspection of Public Records Act, sections 14-2-1, et seq., NMSA 1978, will be placed in the training program's official record. Any request for records maintained by the bureau will be processed in accordance with the Inspection of Public Records Act.

(4) Grounds for Enforcement Actions: Enforcement actions may result in an action taken against an approved New Mexico EMS training program or an instructor-coordinator affiliated with the training program. These enforcement actions may result in the following actions:

(a) probation or suspension of the training program for a specified period of time;

(b) non-recognition of a training program course;

(c) withdrawal of approval status of a training program by the bureau;

(d) under 7.27.2.13 NMAC, a licensing action may be initiated against an instructor-coordinator when the bureau determines that there may be inappropriate conduct or negligence; grounds for enforcement actions include, but are not limited to the following:

(i) failure to comply with law or rules; failure to comply with the training standards or non-compliance with a training standard found in these rules;

(ii) falsifying documents to include use of any false, fraudulent, or deceptive statement in any document;

(iii) failure to cooperate with an investigation to include failure to furnish the bureau with requested information, as provided by law;

(iv) failure of students or instructors to function within the approved New Mexico scopes of practice,

New Mexico treatment guidelines and the training medicine formulary, as approved by the medical direction committee;

(v) failure to report required documentation including patient care data and annual training reports.

(5) Right to appeal: Any approved New Mexico EMS training program may appeal a decision by the bureau to take an enforcement action.

(6) Notice of contemplated action: When the bureau contemplates taking any action specified in this section, it shall serve upon the approved New Mexico EMS training program a written notice containing a statement of the grounds or subject upon which the proposed action is based and the rule(s) violated.

(7) Right to hearing: The approved New Mexico EMS training program may request a hearing before a hearing officer appointed by the secretary to contest the proposed enforcement action, by mailing a certified return receipt letter addressed to the bureau within twenty (20) days after service of the notice.

(8) Hearing: Upon receipt of a timely request for a hearing, the department of health shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico, within forty-five (45) working days of receipt of the timely request for a hearing.

(9) Notice of hearing: The department shall notify the approved New Mexico EMS training program of the date, time, and place of the hearing, the identity of the hearing officer, and the subject matter of the hearing, not less than thirty (30) days prior to the date of the hearing.

(10) Hearing officer duties: The hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and rule on any motions or other matters that arise prior to the hearing.

(11) Discovery: Upon written request to another party, any party is entitled to:

(a) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(b) inspect and copy any documents or items, which the other party will or may introduce in evidence at the hearing.

(12) Conduct of hearing: Hearings are open to the public unless either party makes a request for closed meeting.

(13) Hearing officer written report and recommendation(s): The hearing officer shall make a written report and recommendation(s) to the secretary containing a statement of the issues raised at the hearing proposed findings of fact, and conclusions of law, and a recommended determination. The hearing officer or designee shall

record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. The hearing officer written report shall be submitted to the Secretary no later than thirty (30) working days after the close of the hearing.

(14) Secretary's determination: The secretary shall render a final determination within ten (10) working days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested. A copy shall be provided to legal counsel for the bureau. [7.27.2.13 NMAC - Rp, 7.27.2.13 NMAC, 1/01/2006]

7.27.2.14 APPENDIX A: SCOPES OF PRACTICE FOR FULLY LICENSED EMERGENCY MEDICAL SERVICES PERSONNEL:

A. Purpose: The purpose of the EMS scopes of practice is to define the skills, techniques, medications, and procedures that are allowed for the practice of emergency medical services in New Mexico and applies to all licensed EMS personnel, EMS services, and EMS medical directors.

B. Medical Director: The emergency medical services (EMS) medical director oversees the medical practice of EMS personnel in EMS Services in accordance with department's regulation 7.27.3 NMAC. The EMS medical director may restrict or withhold the EMS scopes of practice for all EMS providers in an EMS service, as deemed necessary.

C. Approval and Issuance of the Scopes of Practice: In accordance with the EMS Act, Section 24-10B-7.C(4) NMSA 1978, changes to the EMS scopes of practice are recommended at least annually by the EMS medical direction committee. The recommended changes are approved by the Secretary and issued by the bureau. There are training and approval restrictions regarding the implementation of any new actions and medications depending on their location within the scopes of practice. Please read this document carefully prior to implementing any new actions or medications to ensure compliance with training and approval restrictions.

D. Scopes of Practice:
(1) Prior to accomplishing a new skill, technique, medication, or procedure, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform those new skills, techniques, medications, or procedures.

(2) Service medical director approved: All service medical director approved skills, technique, medication, or procedure are considered advanced life sup-

port. Prior to utilizing any skill, technique, medication or procedure designated as service medical director approved, it shall be documented by the service director, medical director, or approved EMS training institution that the EMS provider has been appropriately trained to perform the skills, techniques, medications or procedures. Additionally, each EMS provider must have a signed authorization from the service's medical director on file at the EMS service's headquarters or administrative offices.

(3) Only personnel with full, unrestricted licensure may utilize items designated as service medical director Approved.

E. Emergency medical dispatcher (EMD):

(1) Medical direction is required for all items in the EMD scope of practice.

(2) Allowable Skills: EMD's who are educated in an EMD training program which has been approved by the bureau; and, who are currently certified by the bureau; and, who function with a New Mexico emergency medical dispatch agency (EMDA) that uses the emergency medical dispatch priority reference system (EMDPRS) may perform the following in compliance with the protocols established by the EMDA medical director:

(a) Process calls for medical assistance in a standardized manner, using the approved EMDPRS protocol to elicit required information for evaluating, advising, and treating sick or injured individuals, and dispatching an appropriate EMS response.

(b) Provide pre-arrival instructions to the patient through the caller when possible and appropriate to do so while functioning in compliance with the emergency medical dispatch priority reference system (EMDPRS).

F. EMS first responders (EMSFR):

(1) The following allowed skills, procedures, and drugs may be performed without medical direction.

(a) Basic airway management.

(b) Use of basic adjunctive airway equipment.

(c) Suctioning.

(d) Cardiopulmonary resuscitation (CPR).

(e) Obstructed airway management.

(f) Bleeding control via direct pressure.

(g) Spine immobilization; basic splinting.

(h) Scene assessment, triage, scene safety.

(i) Use of statewide EMS communications system.

(j) Emergency childbirth.

(k) Glucometry.
 (l) Oxygen.
 (2) Medical direction is required for the following items:

(a) allowable skills: mechanical positive pressure ventilation;

(b) allowable drugs and routes:
 (i) oral glucose preparations;

(ii) aspirin PO for adults with suspected cardiac chest pain;

(c) service medical director approved:

(i) semi-automatic defibrillation (including rhythm documentation of cardiac activity);

(ii) insertion of the laryngeal airway device;

(iii) intramuscular (IM) drug administration by auto-injection device;

(iv) intramuscular (IM) auto-injection of the following agents for treatment of chemical and/or nerve agent exposure: 1) atropine, 2) pralidoxime, 3) Albuterol via inhaled administration.

(d) wilderness protocols: the following skills shall only be used by providers who have a current wilderness certification, from a bureau approved wilderness first responder course, who are functioning in a wilderness environment as a wilderness provider (an environment in which transport time to a hospital exceeds two (2) hours, except in the case of an anaphylactic reaction, in which no minimum transport time is required.), and are authorized by their medical director to provide the treatment; these skills include:

(i) administration of epinephrine;

(ii) minor wound cleaning and management;

(iii) cessation of CPR;

(iv) field clearance of a patient's cervical spine in wilderness areas to allow for patient ambulation/transport;

(v) reduction of dislocations resulting from indirect force of the patella, digit, and anterior shoulder.

G. EMT-BASIC (EMT-B):

(1) All items in the EMS first responder scope of practice.

(2) The following allowed skills, procedures, and drugs may be performed without medical direction:

(a) emergency procedures as taught in standard EMT-B courses;

(b) splinting;

(c) wound management.

(3) Medical direction is required for the following items.

(a) Allowable skills:

(i) use of multi-lumen airways (examples: Pharyngotracheal

Lumen Airway (PTLA) and Combi-tube®);
 (ii) pneumatic anti-shock garment.

(b) Allowable drugs and routes:
 (i) activated charcoal by oral (PO) route;

(ii) acetaminophen by oral (PO) route in pediatric patients with fever.

(c) Service medical director approved.

(i) Transport of patients with nasogastric tubes, urinary catheters, heparin/saline locks, percutaneous enteral gastric (PEG) feeding tubes, or vascular access devices intended for outpatient use.

(ii) Administration of naloxone by subcutaneous (SQ), intramuscular (IM), or intranasal (IN) route.

(iii) Administer the following drugs under on-line medical control.

When on-line medical control is unavailable, administration is allowed under off-line medical control if the licensed provider is working under medical direction using approved written medical protocols: 1) patient's own bronchodilator using pre-measured or metered dose inhalation device; 2) epinephrine, 1:1000, no single dose greater than 0.3ml, subcutaneous or intramuscular injection with pre-measured syringe or 0.3ml tuberculin (TB) syringe for anaphylaxis or status asthmaticus refractory to other treatments; 3) administer a patient's own sublingual nitroglycerine for unrelieved chest pain, with on-line medical control only.

H. EMT-INTERMEDIATE (EMT-I):

(1) All items in the EMT-basic scope of practice.

(2) Medical direction is required for all items in the EMT-intermediate scope of practice.

(3) Allowable skills.

(a) Peripheral venous puncture/access.

(b) Blood drawing.

(c) Pediatric intraosseous tibial access - May be used only after two peripheral intravenous attempts have failed or if there is no reasonable possibility of securing peripheral intravenous access. Limited to one attempt, unless second attempt authorized by online medical control at the receiving institution.

(4) Allowable drugs and routes.

(a) Administration of approved medications via the following routes:

(i) intravenous;

(ii) nebulized inhalation;

(iii) sublingual;

(iv) intradermal;

(v) intraosseous tibial infusions in pediatric patients;

(vi) endotracheal (for administration of epinephrine only, under the direct supervision of an EMT-paramedic, or if the EMS service has an approved special skill for endotracheal intubation);

(vii) oral (PO).
 (b) Intravenous (IV) fluid therapy (except blood or blood products).

(c) 50% Dextrose by intravenous (IV) route.

(d) Epinephrine (1:1000), subcutaneous for anaphylaxis and known asthmatics in severe respiratory distress (no single dose greater than 0.3 cc).

(e) Epinephrine (1:10,000) in pulseless cardiac arrest for both adult and pediatric patients. In pediatric patients may be given intraosseous (IO) in 1:1000 concentration per current pediatric advanced life support (PALS) protocols as published by the emergency cardiac care (ECC) committee. Epinephrine may be administered via the endotracheal tube in accordance with the current advanced cardiac life support (ACLS) and current pediatric advanced life support (PALS) protocols as published by the emergency cardiac care (ECC) committee.

(f) Nitroglycerin (sublingual) for chest pain associated with suspected acute coronary syndromes. Must have intravenous access established prior to administration.

(g) Morphine, for use in pain control with approval of on-line medical control.

(h) Diphenhydramine for allergic reactions.

(i) Glucagon, to treat hypoglycemia in diabetic patients when intravenous access is not obtainable.

(j) Promethazine.

(k) Oral steroids for reactive airway disease/acute asthma exacerbation.

(5) Drugs allowed for monitoring during transport: monitoring intravenous (IV) solutions during transport that contain potassium (not to exceed 20 mEq/1000cc or more than 10 mEq/hour).

(6) Immunizations and biologicals: administration of immunizations, vaccines, biologicals, and tuberculosis (TB) skin testing is authorized under the following circumstances:

(a) to the general public as part of a department of health initiative or emergency response, utilizing department of health protocols; the administration of immunizations is to be under the supervision of a public health physician, nurse, or other authorized public health provider;

(b) administer vaccines to EMS and public safety personnel;

(c) tuberculosis (TB) skin tests may be applied and interpreted if the

licensed provider has successfully completed required department of health training;

(d) In the event of disaster or emergency, the state EMS medical director or chief medical officer for the department of health may temporarily authorize the administration of other immunizations, vaccines, biologicals, or tests not listed above.

I. EMT-PARAMEDIC:

(1) All items in the EMT-Intermediate scope of practice.

(2) Medical direction is required for all items in the EMT-Paramedic scope of practice.

(3) Allowable skills:

(a) direct laryngoscopy;
(b) endotracheal intubation;
(c) thoracic decompression (needle thoracostomy);

(d) surgical cricothyroidotomy;
(e) insertion of nasogastric tubes;
(f) cardioversion and defibrillation;

(g) external cardiac pacing;
(h) cardiac monitoring;
(i) use of infusion pumps;
(j) initiation of blood and blood products with on-line medical control;

(k) intraosseous access.

(4) Allowable drugs and routes.

(a) Administration of approved medications via the following routes:

- (i) intraosseous;
- (ii) topical;
- (iii) endotracheal;
- (iv) rectal.

(b) Adenosine.

(c) Amioderone.

(d) Atropine sulfate.

(e) Benzodiazepines.

(f) Bretylium tosylate.

(g) Calcium preparations.

(h) Diphenhydramine.

(i) Dopamine hydrochloride.

(j) Epinephrine.

(k) Furosemide.

(l) Glucagon.

(m) Lidocaine.

(n) Magnesium sulfate.

(o) Narcotic analgesics.

(p) Oxytocin.

(q) Phenylephrine nasal spray.

(r) Sodium bicarbonate.

(s) Thiamine.

(t) Topical anesthetic ophthalmic solutions.

(u) Vasopressin.

(v) Ipratropium.

(5) Drugs allowed for monitoring in transport: requires an infusion pump when given by continuous infusion unless otherwise specified.

(a) Potassium (no infusion pump needed if concentration not greater than 20mEq/1000cc).

(b) Anticoagulation type blood modifying agents (such as fibrolytic drugs,

heparin, glycoprotein IIB-IIIa inhibitors/antagonists).

(c) Procainamide.

(d) Mannitol.

(e) Blood and blood products. (no pump required).

(f) Aminophylline.

(g) Antibiotics.

(h) Dobutamine.

(i) Sodium nitroprusside.

(j) Insulin.

(k) Terbutaline.

(l) Norepinephrine.

(m) Octreotide.

(n) Total parenteral nutrition (TPN).

(o) Beta blockers.

(p) Diltiazem.

(q) Nesiritide.

(r) Propofol in patients that are intubated prior to transport.

(6) Skills approved for monitoring in transport.

(a) Internal cardiac pacing.

(b) Chest tubes.

(7) Medications for administration during patient transfer.

(a) Retavase (second dose only).

(b) Protamine sulfate.

(c) Non-depolarizing neuromuscular blocking agents in patients that are intubated prior to transport.

(8) Patient's own medication that may be administered: epoprostenol sodium. [7.27.2.14 NMAC - Rp, 7.27.2.14 NMAC, 1/01/2006]

7.27.2.15 APPENDIX B: APPROVED TRAINING PROGRAMS - "Approved emergency medical services training program" means a New Mexico emergency medical services training program that is sponsored by a post-secondary educational institution, is accredited by the national accrediting organization for emergency medical services or active in the accreditation process, and is approved by the joint organization on education (JOE) and participates in the joint organization on education. Currently, there are three approved EMS training programs:

A. Emergency Medical Services Academy. University of New Mexico, 2700 Yale SE., Albuquerque, New Mexico 87106, Tel: 505-272-5757. The EMS academy is designated as the lead training agency for providers in New Mexico as stated in Section 24-10B-12 NMSA 1978. The EMS Academy teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

B. Dona Ana Branch Community College. New Mexico State University, Box 30001, Las Cruces, NM 88003-0001, Tel: 505-527-7530. Dona Ana Branch Community College teaches formal

EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

C. Eastern New Mexico University. EMS program, Box 6000, Roswell, NM 88202-6000, Tel: 505-624-7000. The Eastern New Mexico University teaches formal EMS training courses including EMS first responder, EMT-basic, EMT-intermediate, and EMT-paramedic courses.

[7.27.2.15 NMAC - Rp, 7.27.2.15 NMAC, 1/01/2006]

7.27.2.16 APPENDIX C: SPECIAL SKILLS APPLICATION AND REPORTING PROCEDURES:

A. Purpose: Special skills are those skills, procedures, and medications that are requested by an EMS service to enhance emergency treatment capabilities beyond the normal scope of practice, as defined in the EMS Act. Use the enclosed procedures for application, reporting and renewal for special skills. Applications are reviewed and approved or disapproved by the medical direction committee, and once approved, become a legally recognized addition to the service capabilities.

B. General: All levels of EMS personnel, including licensed EMS first responders and all levels of licensed EMTs are eligible for special skills consideration for any procedure, skill or medication.

C. Application Procedure: The EMS service medical director, or his designee, shall coordinate with the EMS service director, and shall make application for special skills to the EMS medical direction committee.

D. Application Document: The application document for a special skill must be tailored to the level of the request. While the degree of detail in each section may vary to match the nature of the skill requested, all applications should include the following elements, in order:

(1) application cover page: titled to state the requested special skill, date of application, name of service, service director name and medical director name;

(2) contact information page: must include address and contact information for the service, service director and medical director;

(3) letters of support: must include individual letters of support from the service director and medical director; additional letters of support from the local medical community or evidence of notification of the local medical community may be required; the need for letters of notification and support from the local medical community and who provides the letters must be adjusted to match the nature of the special

skill requested;

(4) service description: provide a concise description of the EMS service; this includes such items as basic call demographics relevant to the applicant, level of licensure of providers and names and locations of the primary receiving medical facilities;

(5) description of the special skill: provide a description of the procedure, medication or requested skill. Include information on risks, benefits, indications and contraindications;

(6) justification and statement of need: provide a statement explaining why the special skill is needed; this should include a description of the current medical intervention or alternative practice to the special skill and a risk or benefit analysis that supports the special skill requested; the estimated number of potential interventions per year, other relevant statistical data and a statement indicating the level of current scientific information/studies to support the requested special skill; the level of scientific justification can be adjusted to match the level of the special skill requested;

(7) protocol: provide a copy of the treatment protocol. Include other operational protocols relevant to the special skill, if applicable;

(8) training: provide a training syllabus; this must include learning objectives and the training hours for initial and continuing education; this section should also include a description of the instructors, how training will be completed, and a description of the method used to initially evaluate the skill;

(9) QA/QI program: provide a description of the QA/QI process for the special skill, including frequency of evaluation, names and qualifications of the personnel involved in the process; include a copy of the evaluation tool or forms that will be used, if applicable;

(10) the application and all supporting documentation shall be submitted to the EMS bureau, attn: state EMS training coordinator.

E. Applicants may involve the EMS regional offices when preparing a special skill request and include a letter evidencing regional review. Applicants shall forward a copy of their application to their EMS regional office when completed.

F. Upon receipt, the state EMS medical director and state EMS training coordinator will review the application. The service will be notified if the application is found to be incomplete or to contain significant errors.

G. Applications must be received at the bureau at least forty-five (45) days prior to the next regularly scheduled medical direction committee meeting

to be placed on the agenda of that meeting for consideration by the medical direction committee.

H. The medical direction committee shall take action on all special skills applications on the agenda at their regularly scheduled meeting. The medical direction committee may take the following actions on the application: Approved, approved with limitations or restrictions, denied or tabled with a request for a formal presentation or additional information by the requesting service medical director or their designee.

I. The medical direction committee may give an approval subject to specific conditions, limitations or restrictions. This may include a written and/or practical examination.

J. Within ten (10) working days following the decision of the medical direction committee, the state EMS training coordinator shall provide a written response to the applicant regarding the action of the medical direction committee.

K. Special skills may not be utilized until receipt of these special skill approval letter from the bureau. Any specific conditions or limitations will be evidenced in the approval letter from the bureau.

L. Monitoring: It is expected that EMS services with approved special skills will continuously comply with the requirements of their application and approval letter. This includes, but is not limited to, such items as training curricula, approved instructors, quality assurance, protocols and data collection. Any changes to the approved application shall be sent to the state EMS training coordinator for concurrence/coordination with the medical direction committee.

M. The medical direction committee may immediately suspend or revoke special skill privileges for an individual or service that loses medical direction, or fails to comply with the stated requirements, or for any other reason to protect the health and welfare of the people of New Mexico.

N. If a new medical director assumes control of a service with an active special skill program, the bureau shall receive a letter of support from the new medical director within thirty (30) days or the special skill approval may be withdrawn.

O. The service shall maintain a current list of all providers trained and approved to utilize the special skill. This list must be provided to the bureau upon request.

P. Reporting: The service shall provide to the state EMS training coordinator periodic written special skill reports.

During the first year, the report shall be due semi-annually, occurring on June 1 and December 1. Subsequent reports shall be due annually on June 1.

Q. Report Document: The written special skill report shall include the following minimum elements:

(1) report cover page: titled to state the special skill reported, date, name of service, service director and medical director;

(2) contact information page: shall include address and contact information for the service, service director and medical director;

(3) letters of support: Must include individual letters of continued support from the service director and service medical director;

(4) statistics and outcome data: provide data on the utilization and patient outcomes involving the special skill; do not include patient identifiers; all adverse outcomes related to the special skill must be reported;

(5) continuing education: provide evidence of the continuing education program and refresher program;

(6) personnel list: provide a list of all personnel authorized to perform the special skill.

(7) QA/QI program: provide evidence of the ongoing QA/QI program;

(8) renewal: during a regularly scheduled meeting, the medical direction committee shall review all ongoing individual special skills programs on their three-(3) year anniversary and make a determination on renewal;

(9) if the medical direction committee determines not to provide automatic renewal on an ongoing special skill program, the state EMS training coordinator shall provide a written notification to the service director and the service medical director within ten (10) working days;

(10) the special skills program will be placed on the agenda of the next, or subsequent, regularly scheduled meeting of the medical direction committee and final determination regarding renewal will be made.

R. Special skills programs will remain active until a final determination regarding renewal has been made.

S. Special skills application:

- (1) general section;
- (2) EMS service name;
- (3) address;
- (4) service chief/director;
- (5) contact phone number;
- (6) physician medical director;
- (7) physician/medical director contact phone number;
- (8) special skill proposed;

(9) level of licensure necessary for special skill;

(10) estimated number of personnel to be trained;

(11) estimated date of initial training;

(12) training/quality assurance;

(13) describe or identify the curriculum, including learning objectives, training hours, etc.;

(14) please identify the lead instructor and provide a brief summary of their qualifications or attach a resume;

(15) resumes required for new instructors;

(16) if training/experience is required, provide a letter of commitment from the supporting institution;

(17) describe or attach a proposed continuing education plan;

(18) attach a description of quality assurance plan, including periodic case reviews, ongoing problem;

(19) identification and steps for remedial action if necessary;

(20) signatures; person completing the application, service chief/service director and medical director;

(21) submit ten (10) copies of the application in its entirety to: EMS Bureau, State EMS Training Coordinator, 2500 Cerrillos Rd., Santa Fe, NM 87505;

(22) submit one copy to the regional office.

[7.27.2.16 NMAC - Rp, 7.27.2.16 NMAC, 1/01/2006]

7.27.2.17 APPENDIX D: LICENSING APPLICATION:

A. Section I- Initial Application for Licensure.

(1) General: To apply for licensure as an emergency medical dispatcher (EMD), EMD- instructor, EMS first responder, EMT-basic, EMT- intermediate, or EMT- paramedic, the licensure application form shall be used. The instructions for this form are included in the application packet, which is available at the EMS bureau.

(2) The EMS levels currently authorized for licensure in New Mexico are emergency medical dispatcher (EMD), EMD-instructor, EMS first responder, EMT-basic, EMT-intermediate and EMT-paramedic. state examinations are not required for licensure of EMD or EMD-instructor.

B. Registration for Training and/or Licensure Application.

(1) Purpose: The form has been developed by the EMS bureau as part of the statewide EMS information management system. It serves three primary purposes towards applying for licensure. These are:

(a) to register in-state candidates for training with a New Mexico approved EMS training program and the EMS bureau,

thus establishing an EMS candidate record at the beginning of EMS instruction; or,

(b) for use by former EMS personnel whose licensure has expired within the past three (3) years to re-enter the EMS field at the same level; or

(c) for use by out-of-state candidates to apply for testing or licensure.

(2) This form is used to establish a person's record in the EMS registry as a candidate for licensure. Normally, for in-state EMT courses, the form is completed during the course, with the assistance of the course Instructor. It is used by the approved EMS training program and the EMS bureau to register persons for training and establish them as a licensure candidate, respectively.

(3) To request a complete licensure application package, including the licensure application form, call the EMS bureau at 505-476-7701 or write the EMS bureau at: EMS bureau, attn: operations section, 2500 Cerrillos Road, Santa Fe, New Mexico 87505

(4) A package will be sent to applicant in the mail containing all forms required.

(5) Original forms will only be accepted at the EMS bureau, as an optical scanner scans these forms.

C. Test Request Application Form.

(1) Purpose: This form is used to apply for a state examination site. It is used by EMS course graduates who have already completed the registration for training and licensure application form and who are listed as a candidate in the New Mexico registry of EMS personnel. EMS course graduates will have already completed the registration for training or licensing application during their course. If, for some reason, the application was not filled out, call the bureau and an application will be mailed out.

(2) In all cases of licensure, the registration for training or licensure application is required to be scanned into the bureau's computer system prior to the test request application form.

(3) Only original forms will be accepted at the EMS bureau. To request a complete test request application package, please contact the EMS bureau.

[7.27.2.17 NMAC - Rp, 7.27.2.17 NMAC, 1/01/2006]

7.27.2.18 APPENDIX E: EMS PERSONNEL JOB DESCRIPTIONS:

A. Introduction: The bureau is providing the following general position description for the New Mexico EMS provider positions for first responder, EMT-basic, EMT-intermediate, and EMT-paramedic. It is the ultimate responsibility of an employer to define specific job descriptions within each EMS service.

B. Qualifications:

(1) successfully complete a recognized training course from an approved EMS training institution;

(2) possess a valid course completion certificate, and accomplish all state licensure examination application requirements;

(3) additionally, applicants shall meet all established requirements for initial licensing as identified by the current EMS licensure regulations;

(4) a copy of these regulations is available through the EMS bureau;

(5) generally, the knowledge and skills required demonstrate the need for a high school education or equivalent;

(6) ability to communicate verbally; via telephone and radio equipment;

(7) ability to lift, carry, and balance up to 125 pounds (250 pounds with assistance);

(8) ability to interpret written, oral, and diagnostic form instructions;

(9) ability to use good judgment and to remain calm in high-stress situations;

(10) ability to work effectively in an environment with loud noises and flashing lights;

(11) ability to function efficiently throughout an entire work shift;

(12) ability to calculate weight and volume ratios and read small English print, both under life threatening time constraints;

(13) ability to read and understand English language manuals and road maps;

(14) accurately discern street signs and address numbers;

(15) ability to interview patient, family members, and bystanders;

(16) ability to document, in writing, all relevant information in a prescribed format;

(17) ability to converse orally and in written form in English with coworkers and hospital staff as to status of patient;

(18) good manual dexterity, with ability to perform all tasks related to the highest quality of patient care;

(19) ability to assume a variety of postural positions to carry out emergency and non-emergency patient care, including light extrication; from crawling, kneeling, squatting, twisting, turning, bending, to climbing stairs and ladders, and the ability to withstand varied environmental conditions such as extreme heat, cold, and moisture;

(20) ability to work in low light, confined spaces and other dangerous environments.

C. Competency Areas:

(1) Licensed EMS first responder: Must demonstrate competency handling emergencies utilizing all basic life support

equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of first responder, to include the ability to demonstrate competency for all skills and procedures currently approved for the first responder, as identified by the current scope of practice document.

(2) Emergency medical technician-basic: Must demonstrate competency handling emergencies utilizing all basic life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of EMT-basic, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-basic, as identified by the current scope of practice document.

(3) Emergency medical technician-intermediate: Must demonstrate competency handling emergencies utilizing all basic life support and intermediate life support equipment and skills in accordance with all behavioral objectives of the approved New Mexico curriculum of EMT-intermediate, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-intermediate, as identified by the current scope of practice document.

(4) Emergency medical technician-paramedic: Must demonstrate competency handling emergencies utilizing all basic life support and advanced life support equipment and skills in accordance with all behavioral objectives of an approved New Mexico curriculum of EMT-paramedic, and to include the ability to demonstrate competency for all skills and procedures currently approved for the EMT-paramedic, as identified by the current scope of practice document.

D. Description of Tasks For all EMS levels:

(1) Receives call from dispatcher, responds verbally to emergency calls, reads maps, may drive emergency vehicle to emergency site, uses most expeditious route, and observes traffic ordinances and regulations.

(2) Determines nature and extent of illness or injury, takes pulse, blood pressure, visually observes changes in skin color, auscultate breath sounds, makes determination regarding patient status, establishes priority for emergency care, may administer intravenous drugs or fluid replacement as authorized by level of licensure and scope of practice.

(3) May use equipment and other devices and procedures as authorized by level of licensure and scope of practice.

(4) Assists in lifting, carrying, and transporting patient to an ambulance and to a medical facility.

(5) Reassures patients and bystanders and searches for medical identification emblem to aid in care.

(6) Extricates patient from entrapment, assesses extent of injury, uses prescribed techniques and appliances, radio dispatcher for additional assistance or services, provides light rescue service if required and trained, provides additional emergency care following service established protocols.

(7) Complies with regulations in handling deceased, notifies authorities, arranges for protection of property and evidence at scene.

(8) Determines appropriate facility to which patient will be transported, report nature and extent of injuries or illness to the facility, asks for direction from hospital physician or emergency department staff.

(9) Observes patient in route and administers care as directed by physician or service-established protocols.

(10) Identifies diagnostic signs that require communication with facility.

(11) Assists in removing patient/s from ambulance and into emergency facility.

(12) Reports verbally, and in writing, observations about and care of patient at the scene, en-route to facility, and to the receiving facility.

(13) Provides assistance to emergency department staff as required.

(14) Replaces supplies, sends used supplies for sterilization, checks all equipment for future readiness, maintains ambulance in operable condition, ensures ambulance cleanliness and orderliness of equipment and supplies, decontaminates vehicle interior, determines vehicle readiness by checking oil, gas, water in battery and radiator, and tire pressure, maintains familiarity with all specialized equipment. [7.27.2.18 NMAC - Rp, 7.27.2.18 NMAC, 1/01/2006]

History of 7.27.2 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

DOH Regulation 95-04 (CHSD), Regulations Governing the Certification and Licensing of Emergency Services Personnel, filed 10-25-95.

History of Repealed Material: 7 NMAC 27.2, Certification and Licensing of Emergency Medical Services Personnel (filed 11-26-96) repealed 09/13/01. 7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 08/30/01) repealed 01/01/06.

Other History:

DOH Regulation 95-04 (CHSD), Regulations Governing The Certification and Licensing of Emergency Medical Services Personnel (filed 10-25-95), was renumbered and reformatted to and replaced by 7 NMAC 27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel, effective 01/01/97.

7 NMAC 27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 11-26-96) was replaced by 7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel, effective 09/13/01.

7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel (filed 08/30/01) was replaced by 7.27.2 NMAC, Certification and Licensing of Emergency Medical Services Personnel, effective 01/01/06.

NEW MEXICO DEPARTMENT OF HEALTH

TITLE 7 HEALTH CHAPTER 27 EMERGENCY MEDICAL SERVICES PART 5 CERTIFICATION OF AIR AMBULANCE

7.27.5.1 ISSUING AGENCY: New Mexico Department of Health, Epidemiology and Response Division, Emergency Medical Systems Bureau. [7.27.5.1 NMAC - Rp, 7.27.5.1 NMAC, 01-01-06]

7.27.5.2 SCOPE: This regulation applies to any air service within New Mexico that transports persons requiring medical care including, but not limited to: basic life support (BLS), advanced life support (ALS), critical care, or specialty care. Out-of-state services that fly into New Mexico to pick up and/or deliver medical patients shall also be certified in accordance with these rules, or through reciprocity in accordance with these rules. The United States department of defense and the New Mexico department of military affairs are exempt from this rule when conducting official military operations. Public safety agencies that routinely provide air ambulance services shall be certified.

[7.27.5.2 NMAC - Rp, 7.27.5.2 NMAC, 01-01-06]

7.27.5.3 STATUTORY AUTHORITY: These rules are promulgated pursuant to the following statutory authorities: 1) the Department of Health Act, section 9-7-6.E. NMSA 1978, which authorizes the secretary of the department to "... make and adopt such reasonable and

procedural rules and rules as may be necessary to carry out the duties of the department and its divisions," and; 2) the Emergency Medical Services Act, Section 24-10B-4-H, NMSA 1978, which authorizes the department to adopt regulations for the certification of air medical transport. Administration and enforcement of these regulations is the responsibility of the emergency medical systems bureau of the epidemiology and response division, department of health.

[7.27.5.3 NMAC - Rp, 7.27.5.3 NMAC, 01-01-06]

7.27.5.4 D U R A T I O N :
Permanent.

[7.27.5.4 NMAC - Rp, 7.27.5.4 NMAC, 01-01-06]

7.27.5.5 EFFECTIVE DATE:
January 1, 2006, unless a later date is cited at the end of a section.

[7.27.5.5 NMAC - Rp, 7.27.5.5 NMAC, 01-01-06]

7.27.5.6 OBJECTIVE: The purpose of this document is to inform the public and air ambulance services about the requirements and standards for the certification of air ambulance services operating within New Mexico, and the process and procedures to become certified as specified below.

A. These rules provide the minimum criteria and process for the certification of both fixed and rotor wing air ambulance services that operate within the state of New Mexico, based upon the recommendations of the air medical transport advisory committee; to provide minimum standards for certified services to abide by; and, to assist in the provision of a comprehensive system of emergency medical services in the state of New Mexico.

B. These rules are designed to assist air ambulance services in preparing for, achieving, and maintaining certification as a certified air ambulance service in the state of New Mexico. Air ambulance services that have and maintain the commission on accreditation of medical transport systems (CAMTS) accreditation meet the standards for air ambulance certification in the state of New Mexico. The bureau shall certify an air ambulance service with CAMTS accreditation following review and approval of the application and inspection, if necessary, as determined by the bureau, and payment of necessary fees and approval by the bureau.

[7.27.5.6 NMAC - Rp, 7.27.5.6 NMAC, 01-01-06]

7.27.5.7 DEFINITIONS:

A. "Act (EMS Act)" means the Emergency Medical Services

Act, [Sections 2410B1, et seq., NMSA 1978].

B. "Advanced life support air ambulance service" means an organization, certified by the bureau, to transport in an air ambulance, patient(s) who require basic life support (BLS) or advanced life support (ALS) care.

C. "Advanced life support (ALS)" means advanced pre hospital and inter-facility care and treatment, as authorized by regulation, which may be performed only by a person licensed by the department as an emergency medical technician - paramedic (EMT-P), or licensed by the state at a higher level, or otherwise authorized to practice ALS.

D. "Air ambulance service" means any governmental or private service that provides air transportation specifically designed to accommodate the medical needs of a person who is ill, injured or otherwise mentally or physically incapacitated and who requires in-flight medical supervision.

E. "Air ambulance certificate" means a document issued by the department as evidence that an air ambulance service meets the requirements for certification at the advanced life support, critical or specialty care level, as found in these rules.

F. "Aircraft type" means a particular make and model of helicopter or fixed wing aircraft.

G. "Aircraft operator" means the vendor and/or owner who operates and maintains the aircraft utilized by an air ambulance service.

H. "Air medical transport advisory committee (AMTAC)" means a subcommittee of the statewide EMS advisory committee as authorized by the EMS Act, Section 24-10B-7.A., NMSA 1978. The term "air medical transport advisory committee" as used throughout these rules is synonymous with "air transport advisory committee".

I. "Bureau" means the emergency medical systems bureau of the epidemiology and response division, of the department of health.

J. "Certification evaluation team" means a team appointed by the bureau for the purpose of performing an initial or subsequent inspection of air medical services seeking certification, or of those already certified.

K. "Combination service" means any service that has more than one type of aircraft, for example, fixed wing and rotor wing.

L. "Commission on the accreditation of medical transport systems (CAMTS)" means a national accrediting organization that evaluates air ambulance services based on air ambulance industry

standards established by CAMTS.

M. "Critical care air ambulance service" means an organization certified by the bureau to transport patients in an air ambulance that requires critical care.

N. "Critical care" means pre-hospital or inter-facility care and treatment, respectively, that exceeds the advanced life support level of care, as authorized by rule. The critical care mission shall consist of at least one critical care provider and at least one additional provider which shall be licensed at or above the ALS level of care, and/or specifically trained in the area of care required. Additional providers may be added as necessary.

O. "Critical care provider" means the critical care primary provider shall consist of at least one registered nurse, physician assistant, nurse practitioner and/or medical physician trained in the area of critical care.

P. "Department" means the department of health.

Q. "Emergency medical services (EMS)" means the services rendered by providers in response to an individual's need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

R. "Federal aviation regulations (FAR)" means regulations promulgated by the federal aviation administration of the U.S. department of transportation, governing the operation of all aircraft within the United States.

S. "Level of service" means the highest level at which the air ambulance service is certified to function on a 24 hours a day, seven days a week basis.

T. "Medical control" means supervision, provided by or under the direction of physicians to providers by written protocol and/or direct communication.

U. "Medical direction" means guidance or supervision provided by a physician to a provider or emergency medical services system and which includes authority over and responsibility for emergency medical dispatch, direct patient care and transport of patients, arrangements for medical control and all other aspects of patient care delivered by a provider.

V. "Medical direction committee" means a committee of physicians and emergency medical technicians, appointed by the secretary of health to advise the bureau on all matters relating to medical control and medical direction.

W. "Medical director" means a physician who has the responsibility for oversight of patient care of an EMS system or EMS provider service, including providing for or ensuring the medical control of emergency medical technicians, the development, implementation, and evalua-

tion of medical protocols, and quality assurance activities.

X. "Physician" means a doctor of medicine or doctor of osteopathy who is licensed or otherwise authorized to practice medicine or osteopathic medicine in New Mexico.

Y. "Protocol" means a pre-determined, written medical care plan and includes standing orders.

Z. "Provider" means a person who has been licensed by the appropriate agency to provide patient care at the ALS, critical or specialty care level.

AA. "Regional office" means an emergency medical services planning and development agency formally recognized and supported by the bureau.

BB. "Secretary" means the secretary of health.

CC. "Service" means a certified air ambulance service authorized to operate in the state of New Mexico under these rules.

DD. "Specialty care" means care and treatment that exceeds the advanced life support level of care, as authorized by regulation. The specialty care mission shall consist of at least one specialty care provider and at least one additional provider which shall be licensed at or above the ALS level of care, and/or specifically trained in the area of care required. Additional providers may be added as necessary.

EE. "Specialty care provider" means a caregiver appropriately trained and licensed to provide patient care as defined by the mission.

[7.27.5.7 NMAC - Rp, 7.27.5.7 NMAC, 01-01-06]

7.27.5.8 USE OF TERMS AND ADVERTISING: It shall be prohibited for any air ambulance service to advertise or perform air ambulance services, or use the title "certified air ambulance service," in New Mexico, unless it is certified under these rules.

[7.27.5.8 NMAC - Rp, 7.27.5.8 NMAC, 01-01-06]

7.27.5.9 DISCLOSURE TO THE PUBLIC: At the initiation of contact with a potential client, patient or the public, the certified air ambulance service shall disclose the current level of state of New Mexico certification and what level of service can be provided.

[7.27.5.9 NMAC - Rp, 7.27.5.9 NMAC, 01-01-06]

7.27.5.10 FULL CERTIFICATION PERIOD: The certification period for all air ambulance services shall be for a 3-year period. Once a certified air ambu-

lance service becomes accredited by CAMTS, the certification period shall be adjusted by the bureau to correspond with the CAMTS accreditation period.

[7.27.5.10 NMAC - Rp, 7.27.5.10 NMAC, 01-01-06]

7.27.5.11 REPORTING :

Certified air ambulance services shall complete a patient run report for each patient that is transported by air. The minimum data elements identified by the bureau shall be compiled and submitted to the bureau on a quarterly basis, or as determined by the bureau. Certified services shall provide as a minimum, an annual number of runs of patients picked up in New Mexico including location and patient complaint. Review of completed patient care reports may be required during initial and/or subsequent inspections.

[7.27.5.11 NMAC - Rp, 7.27.5.11 NMAC, 01-01-06]

7.27.5.12 EMERGENCY INFORMATION REQUIRED:

Certified air ambulance services shall provide, during initial/renewal of certification, emergency information about the service to the bureau. This information shall be used by the bureau to provide effective communications and resource management, in the event of a statewide or localized disaster/emergency situation. The information is included in the initial/renewal application for certification of air ambulance services.

[7.27.5.12 NMAC - Rp, 7.27.5.12 NMAC, 01-01-06]

7.27.5.13 CERTIFICATION PROCESS AND PROCEDURES:

A. General: Prior to beginning air ambulance operations within the state of New Mexico, either a temporary or full air ambulance certification is required for the levels of service, as outlined below.

(1) Levels of service: the following levels of service are authorized in New Mexico:

(a) advanced air ambulance service: the air medical crew shall at all times consist of at least 2 licensed health care providers, one of which, shall be licensed at the advanced life support (ALS) level or above (minimum licensed EMT-paramedic or above);

(b) critical care air ambulance service: the critical care mission shall consist of at least one critical care provider and at least one additional provider which shall be licensed at or above the ALS level of care, and/or specifically trained in the area of care required; additional providers may be added as necessary;

(c) specialty care air ambulance service: the specialty care mission shall

consist of at least one specialty care provider and at least one additional provider which shall be licensed at or above the ALS level of care, and/or specifically trained in the area of care required; additional providers may be added as necessary;

(d) generally, services certified to provide critical care are certified to perform advanced air ambulance service care; in all such cases, the minimum level of certified/licensed health care provider staffing, for each level of certification, shall be aboard the aircraft;

(e) services that provide care at the advanced, critical or specialty air ambulance level care are required to remain with the patient until someone of equal or higher training assumes care of the patient.

(2) Temporary certification: a temporary certification for a maximum period of three years may be issued by the bureau for non-CAMTS accredited services, upon successful completion of the application process, a preliminary inspection and approval by the bureau, and payment of all required fees.

(a) A preliminary inspection includes an on site visit with the air ambulance service, aircraft, and crew. The certification evaluation team (CET) will normally consist of a bureau representative, the state EMS medical director or a designated physician, state aviation officer, EMS communications manager, and additional personnel as determined by the bureau.

(b) Once a temporary certification is issued, and within the three year certification, the service shall obtain and maintain CAMTS accreditation in order to become fully certified by the bureau. All non-CAMTS accredited air ambulance services shall submit a program information file (PIF) to CAMTS and the bureau within 16 months of acquiring a temporary certification from the bureau as outlined in Subsection B of 7.27.5.13 NMAC.

(3) Full certification: after successfully completing the CAMTS accreditation process, and upon approval by the bureau, a three year air ambulance service certificate for the approved level shall be issued to the service. To be fully certified, an air ambulance service shall:

(a) comply with applicable federal, state, and local laws and rules to operate a business in New Mexico;

(b) submit a copy of CAMTS accreditation certificate;

(c) complete a service application and submit it along with the required application fee to the bureau;

(d) may be required to complete an air ambulance service inspection, as determined by the bureau.

B. Application for certification of non-CAMTS accredited services:

Prior to transporting patients within the state of New Mexico, an air ambulance service:

(1) shall submit to the bureau a completed bureau approved New Mexico air ambulance application with appropriate fees;

(2) shall insure compliance with all federal and state requirements, such as proof of insurance, aircraft inspection certificates, FAA Part 135 certificate, board of pharmacy permit(s), and drug enforcement agency permits;

(3) shall complete the initial bureau inspection process; and

(4) upon successful completion, the bureau shall issue a temporary air ambulance certificate for a period of up to three years for one of the approved levels of service:

(a) by the end of the first (16) sixteen months of the temporary certification period, the service shall provide to the bureau with a copy of the initial CAMTS program information form (PIF) and a letter from CAMTS acknowledging receipt of the PIF;

(b) failure to complete the CAMTS accreditation process during the temporary certification period shall be reviewed by the bureau and may result in initiation of action to suspend the air ambulance service temporary certification; this includes, but is not limited to:

(i) failure to submit a complete PIF to the bureau or CAMTS within the first sixteen months of the temporary certification period; or

(ii) submitting an incomplete PIF; or

(iii) failure to pay appropriate fees to the bureau; or

(iv) failure of a bureau inspection or CAMTS accreditation inspection;

(5) upon receipt of proof of CAMTS accreditation and approval of the bureau, the bureau may issue a full air ambulance certification.

C. Application for certification of CAMTS accredited services: Prior to transporting patients within the state of New Mexico, an air ambulance service shall:

(1) submit to the bureau a completed bureau approved New Mexico air ambulance application with appropriate fees; and

(2) ensure compliance with all federal and state requirements such as proof of insurance, aircraft inspection certificates, FAA Part 135 certificate, board of pharmacy permit(s), and drug enforcement agency permits; and

(3) submit proof of current CAMTS accreditation; services that maintain CAMTS accreditation shall notify the

bureau immediately of any CAMTS accreditation status changes;

(4) upon successful completion the bureau shall issue a full New Mexico air ambulance certification at the appropriate level of care.

D. Certification evaluation team (CET): The CET shall typically consist of the membership listed below. The bureau shall convene the membership of the CET as necessary to perform either the initial, temporary service inspections, or whenever the bureau deems necessary.

(1) The CET membership is composed of the following individuals, as determined by the bureau:

(a) bureau representative - team leader;

(b) state EMS medical director or a designated physician;

(c) state aviation representative;

(d) EMS communications representative;

(e) other members as deemed necessary by the bureau.

(2) Services shall be given advanced notice, in writing, of those personnel selected for the CET. A service which has a good faith belief that selected individual(s) on the CET may be biased or have a possible conflict of interest, may request that the bureau select a new member. In all such cases, the bureau shall make the final determination of CET membership.

(3) Other inspections: Inspections of non-CAMTS accredited, out-of-state services shall follow the certification process, as outlined. When out-of-state travel is required of the CET, the service applying for certification shall be responsible for reimbursement of travel expenses.

E. Changing the level of service: Changing a level of service shall require the service to submit an initial application for that level of service, along with certification fees. Changing from a rotor or fixed wing service to a combination service will also require a new application and fee. Changing from a combined rotor wing and fixed wing service to a single type of aircraft service will require a new application and fee for the service(s) involved.

F. Renewal of certification and inspection: Services shall retain state certification by renewing their certification every three years, concurrent with CAMTS accreditation. This is accomplished by submitting the required renewal application, fee, and proof of current CAMTS accreditation. Normally, the certification for air ambulance services that maintain national accreditation according to the standards of the CAMTS do not require a renewal inspection by the bureau to maintain certification, but, shall meet all other requirements, including the submission of a renewal application and payment of fees. The bureau may perform an inspection of a certified air ambulance service, as determined by the bureau. The renewal application contains general air ambulance service information and is used in conjunction with the initial certification application standards when applying for renewal to update the bureau on the air ambulance service.

[7.27.5.13 NMAC - Rp, 7.27.5.13 NMAC, 01-01-06]

7.27.5.14 FEES:

A. A fee shall be assessed by the bureau for certification to operate an air ambulance in the state of New Mexico. The bureau, with the advice of the air medical transport advisory committee and the statewide EMS advisory committee, shall set the amount of the fee. Exceptions: fees shall not apply to:

(1) an air ambulance service from another state assisting in the response to a major disaster, mass casualty incident or other emergency;

(2) an air ambulance service transferring patients to or from New Mexico less than two times per month.

B. Fees for upgrading the level of service will be the same fee that is required for initial application. Fees for changing from fixed wing or rotor wing to a combination service will be the same as for a new service. Fees for changing from a combination rotor wing and fixed wing service to a single type of service will be the same as a new service.

C. Fees Table:

(1) Initial certification fees for CAMTS accredited services: The \$625.00 base fee for initial certification of single aircraft type includes one aircraft or \$925.00 initial certification fee for combination service includes two aircraft. An additional \$200.00 is required for each additional assigned/operating aircraft and/or base, not to exceed \$1825.00 per service.. Additional fees may be assessed if additional travel is required to accommodate out-of-state applicants:

Type of Service	In-State Fee	Out-of-State Fee	Additional Aircraft Fee
Rotor Wing Service	\$625.00	\$1,125.00	\$200.00 per aircraft
Fixed Wing Service	\$625.00	\$1,125.00	\$200.00 per aircraft
Combination Service	\$925.00	\$1,425.00	\$200.00 per aircraft

(2) Initial Certification Fees for Non-CAMTS Accredited Services: The \$1250.00 base fee for initial certification of single aircraft type includes one aircraft or \$1850.00 initial certification fee for combination service includes two aircraft. An additional \$200.00 fee is required for each additional assigned/operating aircraft and/or base, not to exceed \$3,250.00 per service. Additional fees may be assessed if additional travel is required to accommodate out-of-state applicants.

Type of Service	In-State Fee	Out-of-State Fee	Additional Aircraft Fee
Rotor Wing Service	\$1,250.00	\$2,250.00	\$200.00 per aircraft
Fixed Wing Service	\$1,250.00	\$2,250.00	\$200.00 per aircraft
Combination Service	\$1,250.00	\$2,250.00	\$200.00 per aircraft

(3) Renewal Certification Fees: The following fees are to be submitted along with the air ambulance service renewal application whether based in-state or out-of-state:

Type of Service	Fee
Rotor Wing Service	\$500.00
Fixed Wing Service	\$500.00
Combination Service	\$500.00

(4) Changes to Air Ambulance Service After Certification:

Type of Service	In-State Fee	Out-of-State Fee
Rotor or Fixed Wing Service to Combination Service	\$625.00	\$625.00
Combination Services to Rotor or Fixed Wing Service	\$625.00	\$625.00
Adding Additional Aircraft After Certification	\$200.00 per aircraft	\$200.00 per aircraft

[7.27.5.14 NMAC - Rp, 7.27.5.14 NMAC, 01/01/06]

7.27.5.15 ENFORCEMENT:

A. Complaint/Incident Procedures: Any person may communicate a complaint or knowledge of an incident to the bureau. Complaints shall be submitted in signed written form to the bureau as soon as practical. The bureau may begin an investigation if there is sufficient cause.

(1) When a complaint is received by the bureau, written acknowledgement shall be made within 10 working days and the staff shall decide whether or not a preliminary or formal investigation of the complaint shall be initiated.

(2) If no investigation is warranted, the service or person filing the complaint will be notified, as determined by the bureau.

(3) Services being formally investigated shall receive written notification within ten (10) working days after a decision is made to begin a formal investigation, unless extenuating circumstances exist which would reasonably preclude notification.

(4) At the conclusion of the bureau's formal investigation, the bureau may report its findings to the investigated service in written form. If the bureau investigation warrants disciplinary action against a service, the service will be given a notice of contemplated action (see right to appeal and hearing in 7.27.15.D NMAC).

(5) If the bureau makes a good faith judgment that the health and/or safety of the public would be jeopardized, it may take immediate action to suspend an air ambulance service's certification to prevent a service from operating within New Mexico. The suspended service shall be afforded an expedited appeal and hearing process.

B. Investigations: Investigations shall normally be conducted by the bureau.

(1) Preliminary Investigations: When the bureau receives information that might form the basis for disciplinary action against a service, it shall begin a preliminary investigation. This is a fact finding/information gathering investigation that will attempt to determine for the bureau whether justification exists to initiate an action or to conduct a formal investigation.

(2) Formal Investigations: Formal investigations are for the purpose of obtaining additional information to allow the bureau to determine if it will initiate an action. Notice will be given to the service that is the subject of the formal investigation, unless extenuating circumstances exist which would reasonably preclude notification.

(3) Confidentiality: The bureau will take every precaution to insure that investigations are conducted in a confidential manner.

(4) Records: An official record is maintained for every New Mexico air ambulance service, certified under these rules. If the bureau begins an investigation, a separate confidential record will be created containing all investigation material. If the bureau initiates an action, all records not exempt from disclosure under the inspection of public records act, sections 14-2-1, et seq., NMSA 1978, will be placed in the service's official record. Any request for records maintained by the bureau will be processed in accordance with the inspection of public records act.

C. Grounds For Denial, Suspension, and Revocation: Air ambulance certification may be denied, suspended or revoked based on the following grounds:

(1) fraud, deceit, misrepresentation in obtaining certification, including misrepresentation during the initial or renewal certification process;

(2) failure to meet any certification/accreditation requirements including failing to acquire and/or maintain accreditation with the

commission on accreditation of medical transport systems (CAMTS) as outlined in these rules;

(3) negligence in the delivery of air ambulance medical services, including, but not limited to:

(a) malpractice and/or substandard medical care or treatment; or

(b) using non-licensed personnel or personnel performing outside the standard of care/scope of practice; or

(c) failure to have operational equipment and failure to carry the required equipment, or inappropriate use of equipment during a flight; or

(d) unauthorized disclosure of medical or other confidential information;

(4) loss of federal aviation administration certification or failure to notify the bureau of such loss of certification;

(5) loss of CAMTS accreditation or failure to notify the bureau of such loss of accreditation;

(6) failure to report revocation, suspension, denial, or other adverse actions taken in any other state or jurisdiction affecting the ability to provide air ambulance services;

(7) performing air ambulance operations without being certified by the department to perform the authorized level of service, including providing service after expiration of a certification;

(8) the use of any false, fraudulent, or deceptive statement in any document connected with the operation of an air ambulance service;

(9) failure to cooperate with an investigation or to furnish the bureau with requested information;

(10) failure to report required documentation, including patient run report data;

(11) failure of a service to comply with the rotor wing response protocol or the fixed/rotor wing inter-facility transportation protocol as outlined in these rules.

D. Right to Appeal: Any service may appeal a decision by the department to deny, suspend or revoke air ambulance certification as provided below:

(1) denial of initial certification: any air ambulance service applying for certification may appeal to the department a denial of an application for certification;

(2) suspension or revocation of an existing certification: any certified air ambulance service may appeal to the department the proposed suspension or revocation of certification;

(3) denial for renewal of certification: any certified air ambulance service may appeal to the department the denial of a renewal application for certification.

E. Notice of Contemplated Action: When the bureau contemplates taking any action specified in Subsection C of

7.27.5.15 NMAC, it shall serve upon the applicant or certified service a written notice containing a statement of the grounds or subject upon which the proposed action is based, and rule(s) violated.

F. Right to Hearing: The applicant or certified service may request a hearing before a hearing officer appointed by the Secretary to contest the proposed action, by mailing a certified return receipt letter addressed to the bureau within twenty (20) days after service of the notice.

G. Hearing: Upon receipt of a timely request for a hearing, the department shall appoint a hearing officer and schedule a hearing, to be held in Santa Fe, New Mexico, within forty five (45) working days of receipt of the timely request for a hearing. Exception: in the event of an immediate suspension by the bureau to protect the safety and health of the public, the air ambulance service will be afforded an expedited hearing within twenty (20) days of the date of the receipt of appeal.

H. Notice of Hearing: The department shall notify the applicant or certified service of the date, time, and place of the hearing, the identity of the hearing officer, and the subject matter of the hearing, not less than thirty (30) days prior to the date of the hearing. Exception: in the event of an immediate suspension to protect the safety and health of the public, notice will be provided of an expedited hearing within ten (10) days of receipt of appeal.

I. Hearing Officer Duties: The hearing officer shall preside over the hearing, administer oaths, take evidence and decide evidentiary objections and rule on any motions or other matters that arise prior to the hearing.

J. Discovery: Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

K. Conduct of Hearing: Hearings are open to the public unless a request for closed meeting is made by either party.

L. Hearing Officer Written Report and Recommendation(s): The hearing officer shall make a written report and recommendation(s) to the secretary containing a statement of the issues raised at the hearing, proposed findings of fact, and conclusions of law, and a recommended determination. The hearing officer or designee shall record the hearing by means of a mechanical sound recording device provided by the department for a record of the hearing. The hearing officer written report

shall be submitted to the secretary no later than 30 working days after the close of the hearing.

M. Secretary's Determination: The secretary shall render a final determination within 10 working days of the submission of the hearing officer's written report. A copy of the final decision shall be mailed to the appealing party by certified mail, return receipt requested. A copy shall be provided to legal counsel for the bureau.

[7.27.5.15 NMAC - Rp, 7.27.5.15 NMAC, 01/01/06]

7.27.5.16 STANDARDS: The most recent standards for air ambulance services published by the CAMTS are incorporated by reference, with the written permission of CAMTS. Air ambulance services shall meet the standards outlined in the CAMTS *accreditation standards*, with following exceptions:

A. Rotor Wing Scene Response Protocol (Rotor Wing): All rotor wing air ambulance services certified to operate in the state of New Mexico shall adhere to the response and transportation policy outlined below. Failure to adhere to the response protocol policy may be investigated by the department and may result in disciplinary action against the service(s) involved in the non-compliance. The department recognizes that air ambulance services may need to occasionally deviate from this policy in the best interest of patient care.

(1) Response: When a request from a EMS provider, law enforcement officer, or the incident commander for a rotor wing air ambulance is received by telephone or radio at a dispatch center to respond to a scene, the dispatcher or air ambulance service shall ensure that the closest available service shall respond. If another rotor wing service is closer to the scene and their aircraft is available to respond, the request shall be transferred and communicated to that service, without delay.

(2) Transportation: All patients shall be transported by the rotor wing air ambulance service to the closest appropriate facility. For trauma patients, the regional or local trauma transportation protocols/guidelines should guide the destination decision. Regional or EMS system transportation protocols/guidelines shall also guide transportation decisions.

B. Inter-facility Transportation Protocol (Rotor Wing and Fixed Wing): The department follows the federal Emergency Medical Treatment and Labor Act (EMTALA) for inter-facility transfers.

(1) For inter-facility transfers, it is the responsibility of the physician at the

sending facility to arrange an "appropriate transfer" under the EMTALA requirements. The EMTALA requirements include as part of arranging an "appropriate transfer" that the sending physician secure an appropriate method of transportation that is consistent with the patient's needs. (It is recommended that the sending physician and the receiving physician consult when making the decision about the appropriate method of transportation.)

(2) Physicians arranging inter-facility transfers must remain current on available EMS transportation options within their area. In New Mexico, the following options are available in many geographical areas; Regular ground ambulance (BLS and ALS), critical care ground ambulance, fixed wing air ambulances (BLS, ALS, and critical care), and rotor wing air ambulances (critical care).

C. Specific Exceptions to the CAMTS Accreditation Standards.

(1) Throughout the standards, the words "should be" means "shall" for the purpose of certification in New Mexico.

(2) In the far right hand column, "RW" applies to "rotor wing" and "FW" applies to "fixed wing". Both "RW" and "FW" apply for certification of air ambulance services in New Mexico.

(3) In the far right hand column, "G" refers to "ground transport" and "ME" refers to "medical escort". These do not apply for air ambulance certification in New Mexico.

(4) In section 01.10.02, the minimum "general liability insurance" required for rotor wing services is 50 million dollars in New Mexico.

(5) In section 01.10.01, if an accredited program refers a flight to another service, it shall follow the rotor wing scene response protocol and the inter-facility transportation protocol as found in section 7.27.5.16 NMAC.

(6) In section 01.12.00, all air ambulance services shall report aviation incidents and accidents to the CONCERN network and the bureau, as well as all appropriate other government agencies. See the CAMTS standards glossary for a definition of incident and accident. The CONCERN network provides information regarding accidents and incidents in the air medical and critical care transport community. This information is provided by the transport service involved and then distributed via email by the CONCERN network. The purpose of the CONCERN network is to increase awareness of safety hazards in the medical transport community. It is accessible via the world wide web at <http://www.concern-network.org>.

(7) In section 01.12.00, air ambulance services shall report all aviation incidents and accidents to the CONCERN net-

work and the bureau, in addition to all other appropriate government agencies required by law.

(8) In section 02.03.00, a clinical care supervisor shall be an EMT-P or higher level of licensure.

(9) In section 02.04.01, on site shifts scheduled for greater than twenty-four hours are discouraged.

[7.27.5.16 NMAC - Rp, 7.27.5.16 NMAC, 01/01/06]

7.27.5.17 RADIO COMMUNICATION FREQUENCIES:

A. The following UHF medical frequencies are required in all air ambulance vehicles to communicate with the New Mexico EMS system and to conduct medical communication in the state of New Mexico.

(1) Transmit 463.000, receive 468.000.

(2) Transmit 463.235, receive 468.025.

(3) Transmit 463.050, receive 468.050.

(4) Transmit 463.075, receive 468.075.

(5) Transmit 463.100, receive 468.100.

(6) Transmit 463.125, receive 468.125.

(7) Transmit 463.150, receive 468.150.

(8) Transmit 463.175, receive 468.175.

(9) Transmit 462.950, receive 467.950.

(10) Transmit 462.975, receive 467.975.

[7.27.5.17 NMAC - Rp, 7.27.5.17 NMAC, 01/01/06]

7.27.5.18 STANDARDS AND REQUIREMENTS CHECKLISTS:

Standards and requirements are outlined in the CAMTS accreditation standards incorporated by reference, with the written permission of CAMTS, with the noted exceptions in section 7.27.5.16 NMAC.

[7.27.5.18 - Rp, 7.27.5.18 NMAC, 01/01/06]

7.27.5.19 APPLICATION FOR AIR AMBULANCE CERTIFICATION:

All applications for certification as an air ambulance shall contain the following:

A. service name;

B. ownership structure: sole proprietor, partnership, corporation, etc.;

C. service mailing address;

D. physical location of facilities: use additional sheets as necessary;

E. communications;

(1) business telephone;

(2) facsimile number;

(3) dispatch center telephone;

(4) emergency point of contact;

(5) operations telephone;

(6) cellular telephone;

(7) pager number;

F. communications center:

physical location of the communications center;

G. medical service management personnel:

(1) program administrator: name, telephone, facsimile, and other contact information as applicable;

(2) medical director: name, license number, telephone, facsimile, and other contact information as applicable;

(3) clinical care supervisor: name, telephone, facsimile, and other contact information as applicable;

H. hours of operations: 24 hour, 7 days a week, other (please explain);

I. type of air ambulance certificate requested:

(1) fixed wing only;

(2) rotor wing only;

(3) combination service;

J. level of service requested:

(1) advanced life support;

(2) critical care;

(3) specialty care;

K. service affiliation:

(1) private or government service;

(2) hospital, police, independent,

or municipal;

L. aircraft certificate holder:

(1) service name;

(2) contact person;

(3) address;

(4) business telephone;

(5) facsimile;

(6) certificate number;

M. type of aircraft: for fixed and rotor wing, the following information is required:

(1) make of aircraft(s);

(2) model of aircraft(s);

(3) tail number(s);

N. level of staffing: For both fixed and rotor wing, please attach a copy of your staffing plan to include the following:

(1) EMS personnel: EMT-P and the number of each;

(2) nursing personnel: number and type;

(3) physician(s): number and type;

(4) other personnel: number and type;

O. emergency information: emergency contact information shall

be provided for the service director, clinical care supervisor, medical director, and dispatch agency;

P. all applicants shall meet the CAMTS accreditation standards for the level of service of the air ambulance service; some CAMTS accreditation standards may be waived by the bureau for initial certification since new start-up air ambulance services cannot achieve CAMTS accreditation without being in service for a period of time; some CAMTS accreditation standards have exceptions that are listed in 7.27.5.16 NMAC; in general the initial application for air ambulance certification shall include the following:

Standards	Reference Number
Medical Section	
Capabilities and Resources of the Medical Transport Service and receiving hospitals	01.00.00
Medical Personnel	02.00.00
Medical Director	02.01.00
Medical Control Physician	02.02.00
Clinical Care Supervisor	02.03.00
Staffing	02.04.00
Mission Types	02.05.00
Training and Continuing Education	02.06.00
Aircraft/Ambulance Section	
Medical Configuration	03.00.00
Operational Issues	04.00.00
Aircraft/Ambulance Equipment	05.00.00
Communications	06.00.00
Management and Administrative Responsibilities	
Management Policies	07.00.00
Utilization Review	07.01.08
Quality Management	08.00.00
Infection Control	09.00.00
Rotor Wing Standards	
Certificate of the Aircraft Operator	10.00.00
Weather and Weather Minimums	11.00.00
Pilot Personnel	12.00.00
Maintenance	13.00.00
Helipad	14.00.00
Refueling	15.00.00
Community Outreach	16.00.00
Fixed Wing Standards	
Certificate of the Aircraft Operator	17.00.00
Aircraft	18.00.00
Weather	19.00.00
Pilot Personnel	20.00.00
Policies	21.00.00
Maintenance	22.00.00
Refueling	26.00.00
Community Outreach	27.00.00
Ground Inter-facility Standards : Not Applicable.	N/A
Addendums	
Addendum A - Rationale for Change - Critical Care Alternative	
Addendum B - Education Matrix	
ALS-BLS Ground Standards: Not Applicable	N/A
Medical Escort Standards: Not Applicable	N/A

[7.27.5.19 NMAC - Rp, 7.27.5.19 NMAC, 01/01/06]

7.27.5.20 AIRCRAFT EQUIPMENT STANDARDS: Standards and requirements are outlined in the CAMTS accreditation standards incorporated by reference, with the noted exceptions in section 7.27.5.16 NMAC.

[7.27.5.20 NMAC - Rp, 7.27.5.20 NMAC, 01/01/06]

7.27.5.21 TRAINING STANDARDS: Standards and requirements are outlined in the CAMTS accreditation standards incorporated by reference, with the noted exceptions in section 7.27.5.16 NMAC.

[7.27.5.21 NMAC - Rp, 7.27.5.21 NMAC, 01/01/06]

HISTORY of 7.27.5 NMAC:

Pre NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives:

DOH Regulation 94-09 (CHSD), Regulations Governing The Certification Of Air Ambulance Services For The state Of New Mexico, filed 12-30-94.

History of repealed material:

7 NMAC 27.5, Certification of Air Ambulance Services, repealed 9/13/2001.

7.27.5 NMAC, Certification of Air Ambulance, repealed 01/01/06.

Other History:

DOH Regulation 94-09 (CHSD), Regulations Governing The Certification Of Air Ambulance Services For The State Of New Mexico (filed 12-30-94), renumbered and reformatted to and replaced by 7 NMAC 27.5 NMAC, Certification of Air Ambulance Services, effective 9/13/2001.

7 NMAC 27.5 NMAC, Certification of Air Ambulance Services (filed 11-26-96) replaced by 7.27.5 NMAC, Certification of Air Ambulance, effective 9/13/2001.

7.27.5 NMAC, Certification of Air Ambulance (filed 8/30/01) replaced by 7.27.5 NMAC, Certification of Air Ambulance, effective 01/01/06.

NEW MEXICO DEPARTMENT OF HEALTH

TITLE 7 HEALTH CHAPTER 27 EMERGENCY MEDICAL SERVICES PART 6 EMERGENCY MEDICAL SERVICES ADVANCE DIRECTIVES

7.27.6.1 ISSUING AGENCY:
New Mexico Department of Health,
Epidemiology and Response Division,

Office of Health Emergency Management, Emergency Medical Systems Bureau.

[7.27.6.1 NMAC - Rp, 7 NMAC 27.6.1 NMAC, 1/01/06]

7.27.6.2 SCOPE: This regulation applies to all people of New Mexico who have capacity, or by a person duly appointed under a durable power of attorney for health care, physicians, and emergency medical services personnel.

[7.27.6.2 NMAC - Rp, 7 NMAC 27.6.2 NMAC, 1/01/06]

7.27.6.3 STATUTORY AUTHORITY: These regulations are promulgated pursuant to the following statutory authorities:

A. the Department of Health Act, Section 9-7-6.E NMSA 1978, which authorizes the secretary of the department of health to “. . . make and adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions”; and

B. the Emergency Medical Services Act (as amended by Laws of 2003, Chapter 243), Section 24-10B-4I NMSA 1978, which authorizes the department of health to adopt “regulations pertaining to authorization of providers to honor advance directives to withhold or terminate care in certain pre-hospital or inter-facility circumstances, as guided by local medical protocols”.

[7.27.6.3 NMAC - Rp, 7 NMAC 27.6.3 NMAC, 1/01/06]

7.27.6.4 DURATION: Permanent.

[7.27.6.4 NMAC - Rp, 7 NMAC 27.6.4 NMAC, 1/01/06]

7.27.6.5 EFFECTIVE DATE: January 1, 2006, unless a later date is cited at the end of a section.

[7.27.6.5 NMAC - Rp, 7 NMAC 27.6.5 NMAC, 1/01/06]

7.27.6.6 OBJECTIVE: These regulations will inform the public and New Mexico emergency medical services providers of the procedures to authorize the use of advance directives in pre-hospital and inter-facility settings.

[7.27.6.6 NMAC - Rp, 7 NMAC 27.6.6 NMAC, 1/01/06]

7.27.6.7 DEFINITIONS:

A. “Advance directive” means a written instruction, such as a living will, durable power of attorney for health care or emergency medical services do not resuscitate form recognizable under state law and relating to the provision of health

care when an individual is incapacitated.

B. “Authorized health care decision maker” means a person authorized under a durable power of attorney to make health care decisions on behalf of another, a court-appointed guardian or the parent of a minor or any other person authorized by law to make health care decisions for another.

C. “Bureau” means the emergency medical systems bureau of the office of health emergency management of the epidemiology and response division of the department.

D. “Capacity” means an individual’s ability to understand and appreciate the nature and consequences of proposed health care, including its significant benefits, risks and alternatives to proposed health care and to make and communicate an informed health-care decision.

E. “Durable power of attorney” means a document executed according to the provisions of Sections 45-5-501 through 45-5-502 NMSA 1978 of the New Mexico Probate Code, which designates an individual to make health care decisions for the person executing the document, or an advance health-care directive executed according to the provisions of Sections 24-7A-1 through 24-7A-18 NMSA 1978 of the New Mexico Uniform Health-Care Decisions Act, which designates an agent or surrogate to make health care decisions for an individual.

F. “Designee” means a physician assistant, registered nurse or nurse practitioner, licensed or otherwise authorized to practice, who is designated by a physician to explain an EMS DNR order to a person who may execute the order.

G. “Emergency medical services (EMS)” means the services rendered by emergency medical technicians or certified emergency medical services first responders in response to an individual’s need for immediate medical care to prevent loss of life or aggravation of physical or psychological illness or injury.

H. “EMS bracelet” means a bracelet, medallion or some other item of personal wear, approved by the bureau for indicating in a standard, readily-recognizable manner that the person has executed an EMS DNR order.

I. “EMS do not resuscitate (DNR) order” means an order issued by a physician, and signed by the person or authorized health care decision maker, on a form approved by the bureau, indicating that resuscitative measures should not be performed.

J. “EMS personnel” means persons currently licensed or certified by the bureau to practice as emergency medical technicians (EMTs) or emergency medical services first responders in New

Mexico.

K. “Medical control” means supervision provided by or under the direction of physicians to EMS personnel by written protocol or direct communications.

L. “Physician” means a doctor of medicine or doctor of osteopathy licensed or otherwise authorized to practice medicine or osteopathic medicine.

M. “Pre-hospital setting” means any setting outside of a hospital where EMS personnel are called for assistance, including but not limited to long term care facilities, private homes or during transport.

[7.27.6.7 NMAC - Rp, 7 NMAC 27.6.7 NMAC, 1/01/06]

7.27.6.8 EMS DO NOT RESUSCITATE (DNR) ORDER:

A. Execution and duration of an EMS DNR order.

(1) Any physician may execute an EMS DNR order on behalf of any person with capacity, with the person’s informed consent. The physician or designee shall explain to the person the full meaning of the order, the available alternatives, how the order may be revoked, and answer any questions the person may have about the order. Both the physician, or the physician’s designee upon a verbal order from the physician, and the person for whom the order is executed, shall sign the document.

(2) If the person for whom an EMS DNR order is contemplated has appointed an agent under a durable power of attorney, and the person for whom the DNR order is contemplated lacks capacity, the physician or designee may discuss the situation with the person’s authorized health care decision maker, if any. The physician shall explain to the authorized health care decision maker the full meaning of the order, the available alternatives, how the order may be revoked, and answer any questions the authorized health care decision maker may have about the order. If the authorized health care decision maker gives informed consent to the order, both the physician, or the physician’s designee upon a verbal order from the physician, and the authorized health care decision maker, shall sign the document.

(3) An EMS DNR order shall remain in effect indefinitely unless revoked or unless an expiration date is specified in the document.

(4) An EMS DNR order shall be periodically reviewed by the person for whom the EMS DNR order is executed or by the authorized health care decision maker.

(5) A person for whom an EMS DNR order is executed may choose to wear

an optional EMS bracelet indicating the existence of the order.

B. Revocation of an EMS DNR order.

(1) An EMS DNR order may be revoked at any time orally, by executing a subsequent order, or by performing an act which indicates an attempt to revoke the order, such as by burning, tearing, canceling, obliterating or destroying the order or any part of it, by the person on whose behalf it was executed or by the person's authorized health care decision maker.

(2) If an EMS DNR order is revoked, EMS personnel shall initiate appropriate resuscitation measures.

C. Execution and duration of a durable power of attorney.

(1) Any adult with decisional capacity may execute a durable power of attorney.

(2) A durable power of attorney shall remain in effect indefinitely unless revoked or unless an expiration date is specified in the document.

D. Revocation of a durable power of attorney: a durable power of attorney may be revoked at any time by executing a subsequent durable power of attorney or by performing an act which indicates an attempt to revoke the durable power of attorney, such as by burning, tearing, canceling, obliterating or destroying the document, or any part of it, by the person who executed it. It may also be revoked by an oral statement by the person who executed it.

[7.27.6.8 NMAC - Rp, 7 NMAC 27.6.8 NMAC, 1/01/06]

7.27.6.9 EMS PERSONNEL AND PROCEDURES:

A. Authorization of EMS personnel: EMS personnel shall follow EMS DNR orders or durable powers of attorney when encountering persons in pre-hospital settings in accordance with these regulations and local EMS medical protocols.

B. EMS procedures for verifying EMS DNR orders: EMS personnel shall comply with the following procedures when encountering a possible EMS DNR order:

(1) primary assessment - perform initial primary assessment, i.e., assess airway, breathing and carotid pulse;

(2) verification of identification - verify by:

(a) using a driver's license or other signed photo identification; or

(b) identification by a family member; or

(c) positive third party identification by someone who knows the person;

(3) verification of EMS DNR order - verify the existence of an EMS DNR

order for the person, using the following indicators:

(a) EMS DNR order only: if a valid EMS DNR order is immediately accessible, proceed to Subsection C of 7.27.6.9 NMAC;

(b) intact EMS bracelet: if the person is wearing an EMS bracelet that is fully intact and not defaced, proceed to Subsection C of 7.27.6.9 NMAC;

(c) non-intact or defaced EMS bracelet with an EMS DNR order: if the person is wearing an EMS bracelet that is not fully intact or is defaced, but an EMS DNR order is immediately accessible, proceed to Subsection C of 7.27.6.9 NMAC;

(d) non-intact or defaced EMS bracelet without an EMS DNR order: follow the regular resuscitation protocol and ask family member(s) or others present to locate the EMS DNR order; if the EMS DNR order is located, proceed to Subsection C of 7.27.6.9 NMAC; if the EMS DNR order is not located, continue the regular resuscitation protocol and contact medical control for consultation;

(e) no EMS bracelet and no EMS DNR order: if the person is not wearing an EMS bracelet but there are other indications that the person is on DNR status, follow the regular resuscitation protocol and ask family member(s) or others present to locate the EMS DNR order; if the EMS DNR order is located, proceed to Subsection C of 7.27.6.9 NMAC; if the EMS DNR order is not located, continue the regular resuscitation protocol and contact medical control for consultation;

(4) if there is any question about the validity of an EMS DNR order, or there is any indication of an attempted homicide or suicide, initiate resuscitation until such time that the questions have been answered; if possible, contact medical control for consultation.

C. EMS procedures for implementing EMS DNR orders: if a person has a valid EMS DNR order as evidenced by the steps in Subsection B of 7.27.6.9 NMAC, proceed as follows:

(1) for all persons: the following procedures may be initiated for the comfort of the person if they have not been refused by the person or by the authorized health care decision maker:

(a) administering oxygen by mask or cannula;

(b) suctioning;

(c) managing airways except intubation and other advanced airway maneuvers;

(d) administering analgesics, as authorized by the New Mexico scopes of practice

(e) controlling bleeding;

(f) making patient comfortable;

and

(g) comforting family;

(2) for all persons in cardiac or respiratory arrest: - the following procedures shall be withheld:

(a) external cardiac compressions;

(b) artificial ventilations, intubation or other advanced airway maneuvers;

(c) defibrillation/external cardiac pacing;

(d) administration of cardiac medications; and

(e) artificial respiration;

(3) if there is any question about the validity of an EMS DNR order, or there is evidence of an attempted homicide or suicide, initiate resuscitation until such time that the questions have been answered; if possible, contact medical control for consultation.

D. EMS procedures for implementing durable powers of attorney:

(1) EMS personnel shall comply with the following procedures when encountering a durable power of attorney:

(a) primary assessment - perform initial primary assessment, i.e., assess airway, breathing and carotid pulse;

(b) verification of identification - verify, using a driver's license or other signed photo identification, by family member's positive identification, or identification by a person who knows the person, that the person is the one who executed the durable power of attorney; verify the identification of the person identified in the durable power of attorney as the authorized health care decision maker; follow that person's instructions as authorized by the durable power of attorney;

(2) if there is any question about the validity of a durable power of attorney, initiate resuscitation until such time that the questions have been answered; if possible, contact medical control for consultation.

E. Relationship of EMS DNR orders to durable powers of attorney: Where a person has both an EMS DNR order and a durable power of attorney, the most recent document shall prevail for EMS treatment only.

[7.27.6.9 NMAC - Rp, 7 NMAC 27.6.9 NMAC, 1/01/06]

7.27.6.10 ENFORCEABILITY AND PROGRAM ADMINISTRATION:

A. Enforceability of DNR orders and durable powers of attorney from other states: EMS personnel may honor DNR orders and durable powers of attorney that are executed in another state or jurisdiction in compliance with the laws of that state or jurisdiction, or in compliance with the laws of New Mexico, to the extent the document is not inconsistent with the public policy of New Mexico.

B. Program administra-

tion: the bureau shall distribute, or arrange for the distribution of, EMS DNR order forms and relevant information to interested citizens and appropriate health care providers. These materials shall include specific guidance on how to obtain additional forms and the EMS bracelet.
[7.27.6.10 NMAC - Rp, 7 NMAC 27.6.10 NMAC, 1/01/06]

HISTORY OF 7.27.6 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center:

DOH Regulation 94-10 (CHSD), Regulations Governing EMS Advance Directives For The State Of New Mexico, filed 12/28/94.

History of Repealed Material:

DOH Regulation 94-10 (CHSD), Regulations Governing EMS Advance Directives For The State Of New Mexico (filed 12/28/94) repealed 01/01/06.

Other History:

DOH Regulation 94-10 (CHSD), Regulations Governing EMS Advance Directives For The State Of New Mexico (filed 12/28/94) was renumbered, reformatted and replaced by 7.27.6 NMAC, Emergency Medical Services Advance Directives, effective 01/01/06.

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

This is an amendment to 8.200.510 NMAC, Sections 11 through 13, which will be effective on January 1, 2006. The Medical Assistance Division amended the subsections by changing the deduction amounts.

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA):

The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CRSA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993,

the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

(P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

(Q) On or after January 1, 2005, the state minimum is \$31, 290 and the federal maximum CSRA is \$95,100.

(R) On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-05; A, 1-1-06]

8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT): Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<u>DEDUCTION</u>	<u>AMOUNT</u>
A. Personal needs allowance for institutionalized spouse	\$54
B. Basic community spouse monthly income allowance standard (CSMIA)	\$1,604
(CSMIA standard minus income of community spouse = deduction	
C. * Excess shelter allowance for allowable expenses for community spouse	[\$774] \$885
D. ** Extra maintenance allowance	
E. Dependent family member 1/3 X (CSMIA - dependent member's income)	
F. Non-covered medical expenses	
G. * The allowable shelter expenses of the community spouse must exceed \$482 per month for any deduction to apply.	
H. ** To be deducted, the extra maintenance allowance for the community spouse must be ordered by a court of jurisdiction or a state administrative hearing officer.	

I. **MAXIMUM TOTAL:** The maximum total of the community spouse monthly income allowance and excess shelter deduction is [~~\$2,378~~] \$2,489.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06]

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS: Costs of care are based on the date of application registration.

<u>DATE</u>	<u>AVERAGE COST PER MONTH</u>
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$ 2,377 per month
E. Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month

H. Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
I. Jan. 1, 1998 - Dec 31, 1998	\$3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
K. Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
L. Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
M. Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
N. Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
O. Jan. 1, 2004 - Dec. 31, 2004	\$3,899 per month
P. Jan. 1, 2005 - Dec. 31, 2005	\$4,277 per month
Q. Jan. 1, 2006 -	<u>\$4,541 per month</u>

Any fraction of a month remaining when this calculation is completed is dropped.

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.520 NMAC, Sections 12, 13, 15, 16 and 20, which will be effective on January 1, 2006. The Medical Assistance Division amended the subsections by changing the deduction amounts.

8.200.520.12 COLA DISREGARD COMPUTATION

<u>Current amt/cost of living</u>	<u>Benefit period</u>
<u>Current Title II amount</u> =	Benefit before [1/05] 1/06
1.027 1.041	
<u>Benefit before 1/06</u>	<u>Benefit before 1/05</u>
1.027	
<u>Benefit before 1/05</u> =	Benefit before 1/04
1.021	
<u>Benefit before 1/04</u> =	Benefit before 1/03
1.014	
<u>Benefit before 1/03</u> =	Benefit before 1/02
1.026	
<u>Benefit before 1/02</u> =	Benefit before 1/01
1.035	
<u>Benefit before 1/01</u> =	Benefit before 1/00
1.025	
<u>Benefit before 1/00</u> =	Benefit before 1/99
1.013	
<u>Benefit before 1/99</u> =	Benefit before 1/98
1.021	
<u>Benefit before 1/98</u> =	Benefit before 1/97
1.029	
<u>Benefit before 1/97</u> =	Benefit before 1/96
1.026	
<u>Benefit before 1/96</u> =	Benefit before 1/95
1.028	
<u>Benefit before 1/95</u> =	Benefit before 1/94
1.026	
<u>Benefit before 1/94</u> =	Benefit before 1/93
1.030	
<u>Benefit before 1/93</u> =	Benefit before 1/92
1.037	
<u>Benefit before 1/92</u> =	Benefit before 1/91
1.054	
<u>Benefit before 1/91</u> =	Benefit before 1/90
1.047	
<u>Benefit before 1/90</u> =	Benefit before 1/89
1.040	
<u>Benefit before 1/89</u> =	Benefit before 1/88
1.042	
<u>Benefit before 1/88</u> =	Benefit before 1/87
1.013	
<u>Benefit before 1/87</u> =	Benefit before 1/86

1.031		
<u>Benefit before 1/86 =</u>		Benefit before 1/85
1.035		
<u>Benefit before 1/85 =</u>		Benefit before 1/84
1.035		
<u>Benefit before 1/84 =</u>		Benefit before 7/82
1.074		
<u>Benefit before 7/82 =</u>		Benefit before 7/81
1.112		
<u>Benefit before 7/81 =</u>		Benefit before 7/80
1.143		
<u>Benefit before 7/80 =</u>		Benefit before 7/79
1.099		
<u>Benefit before 7/79 =</u>		Benefit before 7/78
1.065		
<u>Benefit before 7/78 =</u>		Benefit before 7/77
1.059		

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06]

8.200.520.13 FEDERAL BENEFIT RATES

YEAR	Individual FBR	Inst. FBR	Indiv. VTR	Couple FBR	Inst. FBR	Couple VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33
1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33

Ineligible child deeming allocation: [~~\$290.00~~] \$301.00

Part B premium is [~~\$78.20~~] \$88.50 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

Effective January 1, 1989, the SSI resource standard was increased to \$2,000 for an individual and \$3,000 for a couple. These amounts did not change in 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, ~~or~~ 2005, or 2006. [1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06]

8.200.520.15 SSI LIVING ARRANGEMENTS

A. Individual living in his/her own household who own or rent

Payment amount: [~~\$579~~] \$603 Individual
 [~~\$869~~] \$904 Couple

B. Individual receiving support and maintenance payments: For an individual or couple living his/her own household, but receiving support and maintenance from others (such as food, shelter or clothing), subtract the value of one third reduction (VTR).

Payment amount: [~~\$579 - \$193 = \$386~~] \$603 - \$201 = \$402 Individual
 [~~\$869 - \$289.66 = \$579.34~~] \$904 - \$301.33 = 602.67 Couple

C. Individual or couple living household of another: For an individual or couple living in another person's household and not contributing his/her pro-rata share of household expenses, subtract the VTR.

Payment amount: [~~\$579 - \$193 = \$386~~] \$603 - \$201 = \$402 Individual
 [~~\$869 - \$289.66 = \$579.34~~] \$904 - \$301.33 = 602.67 Couple

D. Child living in home with his/her parent(s)

Payment amount: [~~\$579~~] \$603

E. Individual in institution

Payment amount: \$30.00

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.15 NMAC - Rn, 8 NMAC 4.MAD.520.9 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06]

8.200.520.16 MAXIMUM COUNTABLE INCOME FOR INSTITUTIONAL CARE MEDICAID AND HOME AND COMMUNITY BASED WAIVER CATEGORIES: Effective January 1, ~~[2005]~~ 2006, the maximum countable monthly income standard for institutional care medicaid and the home and community based waiver categories is ~~[\$1,717]~~ \$1,789.

[4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 4-1-99; 8.200.520.16 NMAC - Rn, 8 NMAC 4.MAD.520.10 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06]

8.200.520.20 COVERED QUARTER INCOME STANDARD:

DATE CALENDAR QUARTER AMOUNT

Jan. 2006 - Dec. 2006	\$970 per calendar quarter
Jan. 2005 - Dec. 2005	\$920 per calendar quarter
Jan. 2004 - Dec. 2004	\$900 per calendar quarter
Jan. 2003 - Dec. 2003	\$890 per calendar quarter
Jan. 2002 - Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06]

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

Explanatory Paragraph: This is an amendment to 8.215.500 NMAC, Sections 12 and 14, which will be effective on January 1, 2006. The Medical Assistance Division amended the sections to explain how an individual's income and resources are determined in order to achieve two program implications.

8.215.500.12 APPLICABLE RESOURCE STANDARDS:

The resource standard for medicaid extension as well as retroactive SSI medicaid eligibility determinations is \$2,000. See Section QMB-510 for resource standards applicable to QMB. See Section QDS-510 for standards applicable to the qualified disabled working individuals program. See Section SMB-510 for standards applicable to the SLIMB program.

A. **Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the ISS sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first

day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. **Nonliquid resources:**

The value of nonliquid resources is computed at current fair market value. See below for discussion of equity value.

(1) **Real property:** If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource. If an applicant/recipient owns property with one or more individuals, the applicant/recipient's prorated share of the equity value is counted only if the share can be liquidated without the approval of the property's co-owners. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property and the liquidity of the shares.

(2) **Vehicles:** ~~[The value of a vehicle is considered a countable nonliquid resource if the current market value exceeds \$4,500 and the vehicle is not excludable. If the applicant/recipient has more than one vehicle, he/she may designate the vehicle to which the \$4,500 exclusion is applied.]~~

~~(a) "Current market value" is defined as the average price that a vehicle of that particular year, make, model and condition sells for on the open market to a private individual in the particular geographic area involved. A dealer's estimate of the current market value of a vehicle may be obtained when the value is not available from the NADA blue book.~~

~~(b) The \$4,500 exclusion applies to only one vehicle. Equity value is not a consideration for purposes of this exclusion.~~

~~(c) Any vehicle owned by an applicant/recipient in addition to the one wholly or partly excluded is a countable resource in the amount of its equity value.] One automobile is totally excluded regard-~~

less of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.

(3) **Household goods and personal effects:** Household goods and personal effects are considered countable resources if ~~[their cumulative market value as reported by the applicant/recipient exceeds \$2,000. The value in excess of \$2,000 is a countable resource. If the applicant/recipient indicates that he/she has an item of unusual value worth more than \$500, the ISS must obtain the applicant/recipient's estimate of the total cumulative value of all household goods and personal effects. If this amount exceeds \$2,000, the excess amount is included as a countable resource. Household goods include:~~

~~(a) Furniture, major appliances, television sets, recreational vehicles, boats; and~~

~~(b) Personal effects, such as jewelry, furs, musical instruments, art works, hobby and recreational items.~~

~~(c) Wedding and engagement rings are excluded as countable resources.] the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.~~

[2-1-95, 7-31-97; 8.215.500.12 NMAC - Rn, 8 NMAC 4.SSI.511, 3-1-01; A, 1-1-06]

8.215.500.14 RESOURCE EXCLUSIONS:

Some types of resources can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

G. **Vehicle exclusion:** The term "vehicle" includes any mode of trans-

portation, such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing, or as an antique are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion. One vehicle is totally excluded regardless of value [if it meets one of the following conditions:

(1) the vehicle is required for transportation to obtain treatment of specific, persistent or recurring medical problems;

(2) the vehicle is equipped with special devices for an individual with a disability;

(3) the vehicle is necessary for employment;

(4) any vehicle not excluded under this section is considered a countable resource; see 8.215.500.12.B.(2) NMAC.] if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource.

M. Household goods and personal effects exclusion: Household goods and personal effects are excluded if they meet one of the following four criteria. They are:

(1) items of personal property found in or near the home, which are used on a regular basis; items may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture;

(3) items of personal property ordinarily worn or carried by the individual; items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the individual; items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments, items of cultural or religious significance to an individual; or items required because of an individual's impairment.

[2-1-95, 7-31-97; 8.215.500.14 NMAC - Rn, 8 NMAC 4.SSI.513, 3-1-01; A, 5-1-01; A, 7-1-05; A, 1-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Explanatory Paragraph: This is an amendment to 8.281.500 NMAC, Sections 11 and 13, that will be effective on January 1, 2006. The Medical Assistance Division amended the sections to explain how an individual's income and resources are determined in order to achieve two program implications.

8.281.500.11 APPLICABLE RESOURCE STANDARDS: An applicant/recipient is eligible for institutional care medicaid on the factor of resources if countable resources do not exceed two thousand dollars (\$2,000).

A. **Liquid resources:** The face value of liquid resources such as cash, savings or checking accounts is considered in determining medicaid eligibility. The countable value of resources such as securities, bonds, real estate contracts and promissory notes is based on their current fair market value.

(1) An applicant/recipient must provide verification of the value of all liquid resources. The resource value of a bank account is customarily verified by a statement from the bank showing the account balance as of the first moment of the first day of the month in question. If an applicant/recipient cannot provide this verification, the income support specialist (ISS) sends a bank or postal savings clearance to the appropriate institution(s).

(2) If the applicant/recipient can demonstrate that a check was written and delivered to a payee but not cashed by the payee prior to the first moment of the first day of the month, the amount of that check is subtracted from the applicant/recipient's checking account balance to arrive at the amount to be considered a countable resource.

B. **Nonliquid resources:** The value of nonliquid resources is computed at current fair market value. See below for discussion of equity value.

(1) Real property:

(a) If an applicant/recipient is the sole owner of real property other than a home and has the right to dispose of it, the entire equity value is included as a countable resource.

(b) If an applicant/recipient owns property with one or more individuals, the applicant/recipient's prorated share of the equity value is counted only if the share can be liquidated without the approval of the property's co-owners. The applicant/recipient must provide a copy of the legal document which indicates his/her interest in the property and liquidity of the shares.

(2) **Vehicles:** ~~[The value of a vehicle is considered a countable nonliquid resource if the current market value exceeds \$4,500 and the vehicle is not excludable. If the applicant/recipient has more than one vehicle, he/she may designate the vehicle to which the \$4,500 exclusion is applied.~~

~~(a) "Current market value" is defined as the average price that a vehicle of that particular year, make, model, and condition sells for on the open market to a private individual in the particular geographic area involved. A dealer's estimate of the current market value of a vehicle may be obtained when the value is not available from the NADA Blue Book.~~

~~(b) The \$4,500 exclusion applies to only one vehicle. Equity value is not a consideration for purposes of this exclusion.~~

~~(c) Any vehicle owned by an applicant/recipient in addition to the one wholly or partly excluded is a countable resource in the amount of its equity value. One automobile is totally excluded regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Recreational vehicles and boats are considered household goods and personal effects rather than vehicles.~~

(3) **Household goods and personal effects:** Household goods and personal effects are considered countable resources if ~~[their cumulative market value as reported by the applicant/recipient exceeds \$2,000. The value in excess of \$2,000 is a countable resource.~~

~~(a) If the applicant/recipient indicates that he/she has an item of unusual value worth more than \$500, the ISS must obtain the applicant/recipient's estimate of the total cumulative value of all household goods and personal effects. If this amount exceeds \$2,000, the excess amount is included as a countable resource.~~

~~(b) Household goods include:~~

~~(i) furniture, major appliances, television sets, recreational vehicles, and boats; and~~

~~(ii) personal effects, such as jewelry, furs, musical instruments, art works, hobby, and recreational items.~~

~~(c) Wedding and engagement rings are excluded as countable resources.] the items were acquired or are held for their value or are held as an investment. Such items can include but are not limited to: gems, jewelry that is not worn or held for family significance, or collectibles.~~

[2-1-95, 7-31-97; 8.281.500.11 NMAC - Rn, 8 NMAC 4.ICM.511, 3-1-01; A, 1-1-06]

8.281.500.13 RESOURCE EXCLUSIONS: Some types of resources

can be excluded from the calculation of countable resources if they meet the specific criteria listed below.

G. **Vehicle exclusion:** The term "vehicle" includes any mode of transportation such as a passenger car, truck or special vehicle. Included in this definition are vehicles which are unregistered, inoperable, or in need of repair. Vehicles used solely for purposes other than transportation, such as disassembly to resell parts, racing or as an antique, are not included in this definition. Recreational vehicles and boats are classified as personal effects and are evaluated under the household goods and personal effects exclusion.

~~[(1) One vehicle is excluded regardless of value if it meets one of the following conditions:~~

~~(a) the vehicle is required for transportation to obtain treatment of specific, persistent, or recurring medical problems;~~

~~(b) the vehicle is equipped with special devices for an individual with a disability;~~

~~(c) the vehicle is necessary for employment;~~

~~(2) Any vehicle not excluded under this section is considered a countable resource. See 8.281.500.11.B.(2) NMAC.] One vehicle is totally excluded if regardless of value if it is used for transportation for the individual or a member of the individual's household. Any other automobiles are considered to be nonliquid resources. Equity in the other automobiles is counted as a resource.~~

N. **Household goods and personal effects exclusion:** Household goods and personal effects are excluded if they meet one of the following four criteria. They are:

(1) items of personal property, found in or near the home, which are used on a regular basis; items may include but are not limited to: furniture, appliances, recreational vehicles (i.e. boats and RVs), electronic equipment (i.e. computers and television sets), and carpeting;

(2) items needed by the householder for maintenance, use and occupancy of the premises as a home; items may include but are not limited to: cooking and eating utensils, dishes, appliances, tools, and furniture;

(3) items of personal property ordinarily worn or carried by the individual; items may include but are not limited to: clothing, shoes, bags, luggage, personal jewelry including wedding and engagement rings, and personal care items;

(4) items otherwise having an intimate relation to the individual; items may include but are not limited to: prosthetic devices, educational or recreational items such as books or musical instruments,

items of cultural or religious significance to an individual; or items required because of an individual's impairment.

[2-1-95; 7-31-97; 8.281.500.13 NMAC - Rn, 8 NMAC 4.ICM.513, 3-1-01; A, 5-1-01; A, 1-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.324.4 NMAC, Section 14 which will be effective on January 1, 2006. The Medical Assistance Division amended language to the section to conform with provisions of the federal Medicare Prescription Drug, Improvement and Modernization Act of 2003; provide coverage of many prescription items specifically excluded under the MMA; and discontinue coverage of drugs used to treat sexual dysfunction.

8.324.4.14 NON COVERED SERVICES OR SERVICE RESTRICTIONS: Pharmacy services are subject to the limitations and coverage restrictions that exist for other medicaid services. See 8.301.3 NMAC, *General Noncovered Services* [MAD 602].

A. Medicaid does not cover the following specific pharmacy items:

(1) medication supplied by state mental hospitals to recipients on convalescent leave from the center;

(2) methadone for use in drug treatment programs;

(3) personal care items such as non-prescription shampoos, soaps;

(4) cosmetic items, such as retin-A for aging skin, rogain for hair loss;

(5) drug items that are not eligible for federal financial participation, (i.e., drugs not approved as effective by the federal food and drug administration, known as DESI (drug efficacy study implementation) drugs; by the federal food and drug administration, or DESI drugs);

(6) fertility drugs;

(7) antitubercular drug items available from the New Mexico department of health or the United States public health service;

(8) weight loss/weight control drugs are covered with prior authorization;

(9) barbiturate hypnotic drugs, barbiturate drugs whose primary action is to induce sleep for recipients who do not reside in nursing homes; MAD covers barbiturate hypnotic drugs for recipients in nursing homes and for other recipients when authorized on a prior approval basis if related to an appropriate medical diagnosis;

(10) drug items used to treat sexual dysfunction.

B. MAD covers certain non-prescription drug items without special authorization or prior authorization when prescribed by a licensed physician or other licensed practitioner. The billing and claims processing instructions providers receive once enrolled contain information on these drug items. The pharmacy must maintain the prescription, written request, or telephone order reduced to writing. Other non-prescription items can be considered on a prior approval basis when related to an appropriate medical diagnosis requiring an ongoing course of treatment.

C. MAD covers routine non-prescription drug items supplied in nursing facilities or intermediate care facilities for the mentally retarded with specified restrictions.

(1) Routine items are included in the facility's reimbursable cost and cannot be charged to the recipient or billed to medicaid by providers.

(2) Routine drug items, include the following:

(a) laxatives;

(b) stool softeners;

(c) diabetic testing supplies and equipment;

(d) alcohol and body rubs;

(e) aspirin and acetaminophen;

(f) antacids and other agents for treating ulcers;

(g) ointments, lotions and creams;

and

(h) other non-prescription items stocked at nursing stations and distributed or used individually in small quantities.

D. Medicaid does not cover drug items for recipients eligible for medicare part D when the drug item or class of drug meets the federal definition of a medicare part D covered drug. Medicaid does not cover any copayment due from the recipient towards a claim paid by medicare part D. Items or drug classes specifically excluded by medicare part D are covered, non-covered or limited to the same extent that medicaid covers the excluded drug items for full benefit medicaid recipients who are not dual eligibles.

[8.324.4.14 NMAC - Rp, 8 NMAC 4.MAD.753.5, 8/13/04; A, 1-1-06]

NEW MEXICO INFORMATION TECHNOLOGY COMMISSION

1 NMAC 12.1 named "General Provisions" (filed 1/18/2000) is repealed and replaced with 1.12.1 NMAC named "General Provisions". The repeal and replace will become effective 12/02/2005.

**NEW MEXICO
INFORMATION
TECHNOLOGY
COMMISSION**

**TITLE 1 GENERAL GOV-
ERNMENT ADMINISTRATION
CHAPTER 12 INFORMATION
TECHNOLOGY
PART 1 GENERAL PROVI-
SIONS**

1.12.1.1 ISSUING AGENCY.

Information Technology Commission.
[1.12.1.1 NMAC - Rp/E, 1 NMAC 12.1.1, 12/02/2005]
[All documents intended for delivery to the information technology commission shall be addressed or delivered to the office of the chief information officer at 5301 Central NE, Suite 1500, Albuquerque, NM 87108. The internet address for the information technology commission and the office of the chief information officer is www.cio.state.nm.us. The email address for the office of the chief information officer is cio@state.nm.us]

1.12.1.2 SCOPE. This rule applies to all rules adopted by the information technology commission.

[1.12.1.2 NMAC - Rp/E, 1 NMAC 12.1.2, 12/02/2005]

1.12.1.3 STATUTORY AUTHORITY. NMSA 1978 Section 15-1C-5.

[1.12.1.3 NMAC - Rp/E, 1 NMAC 12.1.3, 12/02/2005]

1.12.1.4 DURATION. Permanent.

[1.12.1.4 NMAC - Rp/E, 1 NMAC 12.1.4, 12/02/2005]

1.12.1.5 EFFECTIVE DATE. December 2, 2005, unless a later date is cited at the end of a section.

[1.12.1.5 NMAC - Rp/E, 1 NMAC 12.1.5, 12/02/2005]

1.12.1.6 OBJECTIVE. The purpose of this rule is to set forth provisions that apply to all rules adopted by the information technology commission.

[1.12.1.6 NMAC - Rp/E, 1 NMAC 12.1.6, 12/02/2005]

1.12.1.7 DEFINITIONS. Defined terms apply to this rule and all other rules adopted by the information technology commission.

A. "Act" means the Information Technology Management Act, NMSA 1978 Section 15-1C-1 et seq.

B. "Agency" means an executive agency of the state.

C. "Architectural configuration requirement (ACR)" means the technical specifications for information architecture and computer system purchases for agencies adopted by the commission.

D. "CIO" means the chief information officer.

E. "Commission" means the information technology commission.

F. "Exception" means a request granted by the office allowing an agency an exclusion from compliance with a rule, ACR or guideline that is limited in scope and duration.

G. "Guideline" means a directive adopted by the commission.

H. "Individual" means a natural person, a human being.

I. "Office" means the office of the chief information officer.

J. "Person" means an individual, association, organization, partnership, firm, syndicate, trust, corporation, and every legal entity.

K. "Rule" means any rule adopted by the commission which requires compliance by executive agencies.

L. "State" means New Mexico, or, when the context indicates a jurisdiction other than New Mexico, any state, district, commonwealth, territory, or possession of the United States.

[1.12.1.7 NMAC - Rp/E, 1.12.1.7, 12/02/2005]

1.12.1.8 USE OF COMMISSION-PRESCRIBED FORMS. The office or commission may prescribe forms to carry out certain requirements of its adopted rules, ACRs and guidelines. Prescribed forms must be used when a form exists for the purpose, unless these rules state otherwise or the requirement is waived by the office or commission.

[1.12.1.8 NMAC - Rp/E, 1 NMAC 12.1.8, 12/02/2005]

1.12.1.9 RULE, ACR AND GUIDELINE COMPLIANCE AND EXCEPTION. Rules, ACRs and guidelines shall be followed by agencies under all circumstances unless the office grants an exception in accordance with this rule.

A. An agency may request an exception. An exception shall be granted only if compliance would:

- (1) threaten the function of government;
- (2) threaten the preservation or protection of property;
- (3) threaten the health or safety of any person;
- (4) result in significant increase in agency costs;

(5) hinder mission critical services; or

(6) compromise essential service attributes critical to agency success.

B. An agency shall file a written request for exception with the office that:

(1) identifies the appropriate section of the rule, ACR or guideline from which the agency is requesting an exception;

(2) outlines the grounds on which the request is based; and

(3) includes any information available to support the request.

C. The office shall evaluate the request for exception and provide a written determination to the agency within fifteen (15) business days.

[1.12.1.9 NMAC - Rp/E, 1 NMAC 12.1.9, 12/02/2005]

HISTORY OF 1.12.1 NMAC:

Pre NMAC History: None.

History of Repealed Material:

1 NMAC 12.1 named "General Provisions" (filed 1/18/2000) was repealed 12/02/2005.

NMAC History:

1 NMAC 12.1 named "General Provisions" (filed 1/18/2000) was replaced by 1.12.1 NMAC named "General Provisions", effective 12/02/2005.

**NEW MEXICO BOARD OF
INTERIOR DESIGN**

This is an emergency amendment to 16.42.3 NMAC, Sections 11 and 12, effective December 12, 2005.

**16.42.3.11 PROVISIONS FOR
EMERGENCY LICENSURE:**

A. Interior designers currently licensed and in good standing, or otherwise meeting the requirements for New Mexico licensure in a state in which a federal disaster has been declared, may be licensed in New Mexico during the four months following the declared disaster at no cost upon satisfying the following requirements:

(1) receipt by the interior design board of a completed application which has been signed and notarized and which is accompanied by proof of identity, which may include a copy of a drivers license, passport or other photo identification issued by a governmental entity;

(2) requirements have been met as set forth in 16.42.3.8, 16.42.3.9, 16.42.3.10 NMAC;

(3) applicant shall provide a sworn affidavit that provides the name, address, years of employment and supervisors name;

(4) sworn affidavit that the applicant was personally and/or professionally affected by the disaster;

(5) verification of employment will be accepted from co-worker when it is impossible to obtain it from the employer;

(6) nothing in this section shall constitute a waiver of qualifications of the requirements for licensure contained in 16.42.3 NMAC.

B. The board may waive the application fees only.

C. The board may waive the specific forms required under 16.42.3.8 NMAC only if the applicant is unable to obtain documentation from the federal declared disaster areas.

D. Emergency provisional license shall expire one (1) year from date of issue. Application for permanent license shall be made on or before expiration of the temporary license following the date of issue of the emergency provisional license.

E. The board reserves the right to request additional documentation, including but not limited to, recommendation forms and work experience verification forms prior to approving the permanent license.

[16.42.3.11 NMAC - N/E, 12-12-2005]

16.42.3.12 TERMINATION OF EMERGENCY LICENSE:

A. The emergency license shall terminate upon the following circumstances:

(1) the issuance of a permanent license under 16.42.3 NMAC; or

(2) proof that the emergency license holder has engaged in fraud, deceit, misrepresentation in procuring or attempting to procure a license under this section.

B. Termination of an emergency license shall not preclude application for permanent licensure.

[16.42.3.12 NMAC - N/E, 12-12-2005]

NEW MEXICO MINING COMMISSION

The following is an amendment to 19.10.2.202NMAC, Subsections A,B,C,D and E, effective 12-30-05.

19.10.2.202 ANNUAL FEES

A. The annual fee for an existing mining operation shall be determined by adding:

(1) \$800.00 base fee,

(2) \$15.00 per acre for the first 50 acres of currently disturbed surface land plus \$3.00 per acre for all disturbed land over 50 acres;

(3) a fee determined in accordance with 19.10.2.203 NMAC;

(4) a surcharge of 75% shall be

added to the total annual fees for ~~[existing]~~ mining operations that ~~[obtained an extension in accordance with Subsection D of 19.10.5.501 NMAC, but did not obtain closeout plan approval in 2002;]~~ have 500 acres or more disturbed area in their permit as defined in Paragraph (2) of Subsection D of 19.10.1.7 NMAC; substantially reclaimed acreage as defined in Paragraph (1) of Subsection F of 19.10.2.202 NMAC will not be counted as disturbed acreage for purposes of this paragraph;

~~[(5) a surcharge of 50% shall be added to the total annual fees for existing mining operations that obtained an extension in accordance with Subsection D of 19.10.5.501 NMAC, have obtained closeout plan approval and produced minerals in 2002;]~~

~~[(6)]~~ (5) a surcharge of 50% shall be added to the total annual fees for existing mining operations that did not obtain an extension in accordance with Subsection D of 19.10.5.501 NMAC and have not obtained closeout plan approval; and

~~[(7)]~~ (6) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before ~~[June]~~ April 30th of each year until all Mining Act requirements are met.

B. The annual fee for the new mining operation shall be determined by adding:

(1) \$1,000.00 base fee;

(2) \$30.00 per acre for the first 50 acres of currently disturbed surface land plus \$10.00 per acre for all disturbed land over 50 acres;

(3) a fee determined in accordance with 19.10.2.203 NMAC; and

(4) the annual fee shall be calculated each year based on cumulative acreage disturbed as of December 31st of the prior year, and shall be due on or before ~~[June 30, 2001 and June]~~ April 30th of each subsequent year ~~[for the duration of the permit]~~ following initial submittal of a permit application.

C. The annual fee for a minimal impact existing mining operation shall be \$250.00. This fee shall be due on or before ~~[December 31, 1995, and each subsequent year for the duration of the permit. Beginning in 2001, this fee shall be due on or before June]~~ April 30th of each year following initial submittal of permit application.

D. The annual fee for a minimal impact new mining operation shall be \$250.00. This fee shall be due on or before ~~[December 31st of the year following the permit application and each subsequent year for the duration of the permit. Beginning in 2001, this fee shall be due on or before June]~~ April 30th of each year following initial submittal of permit applica-

tion.

E. The provisions in Subsection A through D of 19.10.2.202 NMAC and Subsection F of 19.10.2.202 NMAC shall not be applicable to any fees due after March 31, ~~[2006]~~ 2009.

F. Formula for Reducing Fees for Substantially Reclaimed Acreage.

(1) For the purposes of 19.10.2 NMAC, "Substantially Reclaimed" means financial assurance has been released pursuant to 19.10.12.1210 NMAC except the amount to establish revegetation pursuant to Subsection A of 19.10.12.1204 NMAC.

(2) For the purposes of 19.10.2 NMAC, the total annual pre-reclamation fee is the total annual fee calculated assuming no reclamation has taken place.

(3) Base fees, disturbance fees and facility fees calculated pursuant to Subsection A of 19.10.2.202 NMAC or Subsection B of 19.10.2.202 NMAC shall be reduced in proportion to the area substantially reclaimed as compared to the total pre-reclamation fee but shall not be reduced to less than 60 percent of the total annual pre-reclamation fee. Formula for fee calculation: Fee owed = Pre-reclamation Fee - (AR/AT) * (Pre-reclamation Fee), where AT = Total Acreage and AR = Reclaimed Acreage.

[7-12-94, 11-15-95, 2-15-96, 5-31-97, 6-30-99, 12-29-2000; 19.10.2.202 NMAC - Rn, 19 NMAC 10.2.2.202, 05-15-2001; A, 05-31-2001; A, 04-30-03; A, 12-30-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.1 NMAC, Section 7, effective 12-30-05.

1.7.1.7 DEFINITIONS:

A. "Agency" means any state department, bureau, division, branch or administrative group which is under the same employer.

B. "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different classification in the same pay band ~~[or pay opportunity]~~. The director shall resolve disputes over how an anniversary date is derived.

C. "Applicant" means any person, who has applied for a position in the classified service.

D. "Board" means the personnel board.

E. "Break in employment" means any period of separation of at least one workday of not being in the classified service.

F. "Candidate" means any person who is on the employment list for a

position.

G. "Classified service" means all positions in the executive branch of state government which are not exempt by law.

H. "Classification" means a job that is occupationally and quantifiably distinct.

I. "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay band [~~or pay opportunity~~].

J. "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band [~~or pay opportunity~~] or from a classified position in one pay band to a classified position in a lower pay band with a reduction in pay, [~~or from a classified position in one manager category to a classified position in a lower manager category with a reduction in pay, or from a manager category to a technical occupation group~~] and/or removal of supervisory responsibilities and pay for disciplinary reasons.

K. "Director" means the state personnel director.

L. "Dismissal" means the involuntary separation from employment for disciplinary reasons.

M. "Diversity in the workplace" means an acknowledgment of all people equally, regardless of their differences. Agencies' management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

N. "Employee" means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from *NMSA 1978, Section 10-9-3-(I)* but in no way confers a greater right on certain persons than contemplated by *Section 10-9-3(I)*].

O. "Employer" means any authority having power to fill positions in an agency.

P. "Employment list" means the list of names, certified by the director, from which a candidate may be selected for appointment.

Q. "Established requirements" means a position's individual job related qualification standards established by the agency and the office in accordance with the specific requirements and/or needs of the position and are subject to review by the director.

R. "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

S. "Exempt service" means all positions in the executive branch

of state government exempt from the classified service by law.

T. [~~"Field of work" means the nature of work performed and the skills and competencies required for success. It is used to describe occupation groups for manager categories and for determination of pay opportunities.~~]

[U.] "Filed" means received by the office.

[V.] U. "First line supervisor" means an employee in a technical occupation group who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

[W.] V. "Involuntary separation" means involuntary removal of an employee from the classified service without prejudice as provided for in *1.7.10.13 NMAC*.

[X.] "Job size" means the levels of responsibility in relation to roles within the same technical occupation group, differences in know-how and accountability in the manager categories and agency utilization of the technical occupation group role or manager category. The job size continuum corresponds to the distinctions in relative worth made by the hay guide chart factor system. It also represents a continuum of career growth within a given occupation.]

[Y.] W. "Line authority" means the assignment of activities and/or approval authority in a manner that does not relinquish the director's administrative oversight or authority.

[Z.] X. "Manager" means an employee in a position that manages internal staff and/or external staff, and who plans, organizes, integrates, coordinates, and controls the activities of others. A manager also is held accountable for the performance of people, services, systems, programs and resources and can change their direction, objectives and assignments to meet performance and business needs.

[AA.] "Manager category" means the five manager categories which encompass the full range of management jobs in the classified service.]

[BB.] Y. "Midpoint" means the salary midway between the minimum and

maximum pay rates of a pay band or pay opportunity that represents the competitive market rate for jobs of the same relative worth in the relevant labor market(s). Midpoint represents a compa-ratio value of 1.00 or 100% percent.

[CC.] Z. "Minimum qualifications" means statutory requirements as required by law, which shall be used to reject applicants.

[DD.] AA. "Office" means the state personnel office.

[EE.] BB. "Pay band" means the range of pay rates, from minimum to maximum [~~for a technical occupation group role~~].

[FF.] [~~"Pay opportunity" means the range of pay rates established for a field of work within a manager category.~~]

[GG.] CC. "Probationer" means an employee in the classified service who has not completed the one-year probationary period.

[HH.] DD. "Promotion" means the change of an employee from a classified position in one pay band to a classified position in a higher pay band [~~or from a classified position in one manager category to a classified position in a higher manager category or from a technical occupation group to a manager category.~~]

[H.] EE. "Reduction" means a voluntary change without prejudice, within an employee's pay band [~~or pay opportunity~~], or from a classified position in one pay band to a classified position in a lower pay band [~~or from a classified position in one manager category to a classified position in a lower manager category or from a manager category to a technical occupation group~~], or voluntary removal of supervisory or leadworker responsibilities and pay.

[JJ.] FF. "Relation by blood or marriage within the third degree" includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

[KK.] GG. "Resignation" means the voluntary separation of an employee from the classified service.

[LL.] HH. "Rules" means the rules and regulations of the personnel board.

[MM.] II. "Status" means all of the rights and privileges of an appointment.

[NN.] JJ. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days, or with the approval of the director a temporary reduction in pay for a period not to exceed 160

consecutive work hours.

~~[[OO]]~~ ~~“Technical occupation group” means (based on the standard occupation classification system devised at the direction of congress by the federal bureau of labor statistics to describe and sort, by occupation, all work performed in the United States) the continuum of non managerial jobs within an occupation, from the most basic to the most advanced. It does not mean any given agency will have the full range of the technical occupation group for any given job.~~

~~[[PP]]~~ ~~“Technical occupation group role” means a representation of the continuum of job levels within a technical occupation group that an agency utilizes to carry out a part of its mission and contains relative complexity (know how, problem solving, and accountability) factors which are measured by the pay system to determine job size and relative worth.~~

~~[[QQ]]~~ ~~KK.~~ “Transfer” means the movement of an employee from one position to another in the same pay band ~~[or pay opportunity]~~ without a break in employment.

~~[[RR]]~~ ~~LL.~~ “Without prejudice” means a declaration that no rights or privileges of the employee concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.

~~[[SS]]~~ ~~MM.~~ “Writing or written” means in the written form and/or an alternative format, where deemed appropriate, and when requested.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 07/07/01; A, 11/14/02; A 10/30/03; A, 7-15-05; A, 12-30-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.3 NMAC, Section 9, effective 12-30-05

1.7.3.9 POSITION ASSIGNMENT:

A. The director, in conjunction with state agencies, shall ensure that each position in the classified service is assigned to the classification that best represents the duties assigned by the employer and performed by the employee.

B. When a filled position is assigned a classification with a lower pay band ~~[or pay opportunity]~~, in accordance with the provisions *Subsection A of 1.7.3.9 NMAC*, the employee may elect to take a reduction in accordance with *Subsection II of 1.7.1.7 NMAC*, or overfill the position in their current classification.

C. A position assignment decision may be appealed to the director through the agency's chain-of-command.

Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.

[1.7.3.9 NMAC - Rp, 1 NMAC 7.3.9, 07/07/01; A, 11/14/02; A, 7-15-05; A, 12-30-05]

NEW MEXICO PERSONNEL BOARD

This is an amendment to 1.7.4 NMAC, Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 & 19 effective 12-30-05

1.7.4.7 DEFINITIONS:

A. “Alternative pay band” means the range of pay rates, from the minimum to the maximum for a ~~[technical occupation group role]~~ classification based on the current market rate for benchmark jobs in the relevant labor market(s).

B. “Appropriate placement” means those elements to be considered in determining pay upon hire, promotion, transfer or reduction including the employee's education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.

C. “Comparison market” means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

D. “Contributor proficiency zones” means subdivisions of the pay band that designate the employee's contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

E. “In pay band adjustment” means movement within a pay band for demonstrated performance, skill or competency development, and/or internal alignment, which allows agency management to provide salary growth within a pay band.

~~[[F]]~~ ~~“In pay opportunity adjustment” means movement within a pay opportunity for a field of work within a manager category for demonstrated performance, skill or competency development, and/or internal alignment, which allows agency management flexibility to provide salary growth within a pay opportunity.~~

~~[[G]]~~ ~~E.~~ “Internal alignment” means an adjustment that addresses pay issues involving the proximity of one employee's salary to the salaries of others in the same agency and ~~[technical occupation group role or manager category]~~ classification who have comparable levels of train-

ing, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

~~[[H]]~~ ~~“Manager category span of pay” means a range of pay from the minimum rate for a manager category up to the maximum rate of pay for a manager category regardless of pay opportunities within the manager category.~~

~~[[I]]~~ ~~“Pay opportunity alignment” means the range of pay rates, from the minimum to the maximum for a field of work within a manager category based on the current market rate for benchmark jobs in the relevant labor market(s).~~

~~[[J]]~~ ~~G.~~ “Pay plan” means a document developed by the director and approved annually by the board, that describes the board's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

~~[[K]]~~ ~~H.~~ “Total compensation” means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

~~[[L]]~~ ~~“Workweek” means a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The director may approve alternative workweeks.~~

[1.7.4.7 NMAC - Rp, 1.7.4.7 NMAC, 11/14/02; A, 7-15-05; A, 12-30-05]

1.7.4.8 PAY PLAN:

A. The director, pursuant to the direction of the board, shall establish, maintain and, in conjunction with state agencies, administer a pay plan for all positions throughout the classified service, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay band ~~[or pay opportunity]~~.

B. Agencies shall develop and utilize a compensation policy that is in compliance with *1.7.4 NMAC*. Agency compensation policies will be filed with, and reviewed by, the director. Subsequent revisions to the compensation policy shall be filed with the office prior to adoption of the policy.

C. The board shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.

D. The director shall conduct an annual compensation survey that includes total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, regional state government employers, and central, western and southwestern state government employers. The board or director may authorize additional comparison markets when deemed necessary and

appropriate.

E. Prior to the end of each calendar year, the director shall submit a compensation report that includes a summary of the status of the classified pay system and the results of the annual compensation survey that includes total compensation to the board. The board shall review, adopt and submit this report to the governor and the legislative finance committee.
[1.7.4.8 NMAC - Rp, 1.7.4.8 NMAC, 11/14/02; A, 7-15-05; A, 12-30-05]

1.7.4.9 ASSIGNMENT OF PAY BANDS [AND MANAGER CATEGORY SPANS OF PAY]: The director shall appoint a job evaluation committee consisting of 10 members. The director will provide training in the job evaluation and measurement process. The committee shall apply the job evaluation and measurement process to all newly created or revised classifications.

A. The committee shall submit the results of the job evaluation(s) as recommendations to the director. The director shall review the results and convert the total job evaluation points to the appropriate pay band [~~or manager category assignment~~]. The director shall submit the pay band [~~or manager category span of pay~~] assignment results to the board for adoption.

B. Agencies may request a re-evaluation of a classification which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months unless otherwise approved by the director.
[1.7.4.9 NMAC - Rp, 1.7.4.8.F NMAC, 11/14/02; A, 7-15-05; A, 12-30-05]

~~1.7.4.10 [ALIGNMENT OF PAY OPPORTUNITIES:~~

~~A. The director aligns a pay opportunity for a field of work based on comparison to market surveys and other relevant salary information.~~

~~B. Pay Opportunity Realignment:~~

~~(1) The director may realign a pay opportunity for a field of work within a manager category span of pay when he deems it appropriate. Pay opportunity realignment will be utilized to address compensation related to recruitment and retention issues. All jobs in a pay opportunity have the same range of pay: minimum, maximum and midpoint pay.~~

~~(2) Agencies requesting pay opportunity realignment for a field of work within a manager category span of pay must meet criteria established in the pay plan.~~

~~(3) The director may realign pay opportunities based on comparison market survey or additional market survey informa-~~

~~tion, to address critical recruitment/retention issues.~~

~~(4) Pay opportunity realignments shall be reviewed annually by the director to determine their appropriateness. The salary of affected employees shall be governed by Subsection I. of 1.7.4.13 NMAC. [1.7.4.10 NMAC - N, 11/14/02]~~

~~[1.7.4.11] 1.7.4.10 ASSIGNMENT OF ALTERNATIVE PAY BANDS:~~

A. The director shall recommend to the board the assignment of an alternative pay band(s) [~~to technical occupation group role(s)~~].

(1) Alternative pay band(s) will be utilized to address compensation related to recruitment and retention issues.

(2) All jobs in an alternative pay band have the same range of pay: minimum, maximum and midpoint pay.

B. Requests for alternative pay bands [~~to technical occupation group role(s)~~] must meet criteria established in the pay plan.

C. The board shall assign alternative pay bands based on the director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.

D. The assignments to alternative pay bands shall be reviewed annually to determine their appropriateness. The director shall recommend to the board the continuation or removal of the alternative pay band assignments. The salary of affected employees shall be governed by **Subsection I. of 1.7.4.13] 12 NMAC.**

[1.7.4.10 NMAC - N, 11/14/02; Repealed, 12-30-05; 1.7.4.10 NMAC - Rn, 1.7.4.11 NMAC & A, 12-30-05]

~~[1.7.4.12] 1.7.4.11 SALARY SCHEDULES:~~

A. Based on the pay plan, the director shall develop and maintain salary schedules for the classified service that shall consist of pay bands [~~and pay opportunities~~].

B. No employee in the classified service shall be paid a salary less than the minimum nor greater than the maximum of their designated pay band [~~or pay opportunity~~] unless otherwise authorized by the director, or provided for in these rules, or the employee has been transferred into the classified service by statute, executive order, or order of a court of competent jurisdiction.

C. The director, pursuant to the direction of the board, shall adjust the salary schedules to address the external competitiveness of the service and/or other concerns. Employees whose pay band [~~or pay opportunity~~] is adjusted upward or

downward shall retain their current salary. Such salary schedule adjustments may result in employees temporarily falling below the minimum or above the maximum of their pay band [~~or pay opportunity~~] upon implementation.

(1) The pay of employees who would be above the maximum of the pay band [~~or pay opportunity~~] shall not be reduced.

(2) The pay of employees who fall below the minimum of their pay band [~~or pay opportunity~~] shall be raised to the minimum unless the director confirms that the agency does not have budget availability. In these instances, agencies shall raise the pay of employees to the minimum of their pay band [~~or pay opportunity~~] within six months of the effective date of the salary schedule adjustment. The director may grant an extension to the six month time period upon submission and approval of a plan by the agency to raise the pay of employees to the minimum of their pay band [~~or pay opportunity~~].

D. An employee's placement in the pay band [~~or pay opportunity~~] will be identified by a compa-ratio value.
[1.7.4.11 NMAC - Rp, 1.7.4.9 NMAC, 11/14/02; 1.7.4.11 NMAC - Rn, 1.7.4.12 NMAC & A, 12-30-05]

~~[1.7.4.13] 1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:~~

A. Entrance Salary:

~~(1) Upon entrance to a [technical occupation group role] classified position, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor zone must receive approval from the director prior to appointment.~~

~~(2) Upon entrance to a manager category, a newly appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay opportunity. Any entrance salary which exceeds a compa ratio of 100.0% must receive approval from the director prior to appointment.]~~

B. Legislative Authorized Salary Increase:

(1) Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within their assigned pay band [~~or pay opportunity~~].

(2) Employees with a salary at or above the maximum of the position's pay band [~~or pay opportunity~~] shall not be eligible for an increase unless authorized by statute.

C. Salary Upon In Pay Band [~~or In Pay Opportunity~~]

Adjustment: Upon in pay band adjustment [~~or in pay opportunity salary adjustment~~], subject to director approval, budget availability and reflective of appropriate placement, agencies may increase an employee's salary up to ten percent (10%) during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than ten percent (10%) and the employee's base salary does not exceed the maximum of the assigned pay band [~~or pay opportunity~~]. When reviewing requests for in pay band [~~or in pay opportunity~~] adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band [~~or pay opportunity~~].

D. Salary Upon Promotion: Upon promotion, an employee's salary subject to budget availability, should reflect appropriate placement within the pay band [~~or pay opportunity~~]. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director. A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the pay band [~~or pay opportunity~~] or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the pay band [~~or pay opportunity~~] does not require the approval of the director. The salary of a promoted employee shall be in accordance with *Subsection B of [1-7.4.12] 1.7.4.11 NMAC.*

E. Salary Upon Demotion: Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay band [~~or pay opportunity~~] or the decrease is being made in accordance with *Paragraph (2) of Subsection F of [1-7.4.13] 1.7.4.12 NMAC.*

F. Pay Allowance for Performing First Line Supervisor Duties:

(1) An agency shall grant a pay allowance to an employee in a [~~technical occupation group~~] non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and shall be between 0% and 20% above the employee's base pay rate.

(2) When the supervisor duties are no longer being performed, the agency shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increas-

es.

(3) Agencies shall require that a form, established by the director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

G. Salary Upon Suspension:

Upon approval by the director, the salary of an employee who has been suspended in accordance with *1.7.11 NMAC* may be temporarily reduced by up to fifteen percent (15%) for a period not to exceed 160 consecutive work hours.

H. Salary Upon Transfer:

(1) [~~The salary of employees who are transferring in accordance with the provisions of Subsection QQ of 1.7.1.7 NMAC shall remain the same unless the director approves a higher or lower value.~~] Upon transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased up to ten percent (10%). The director may approve a salary increase greater than ten percent (10%) due to special circumstances that are justified in writing.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

I. Salary Upon Pay Band [~~or Pay Opportunity~~] Change:

When a change of pay band [~~or pay opportunity~~] is authorized in accordance with the provisions of *1.7.4.9 NMAC, 1.7.4.10 NMAC, and/or 1.7.4.11 NMAC* [~~and/or 1.7.4.12 NMAC~~] the salaries of affected employees shall be determined in accordance with *Subsection C of [1-7.4.12 NMAC] 1.7.4.11 NMAC.* Employees whose pay band [~~or pay opportunity~~] is adjusted upward or downward shall retain their current salary in the new pay band [~~or pay opportunity~~]. Employees' salaries may be addressed through in pay band [~~or in pay opportunity~~] adjustment unless otherwise allowed by statute.

J. Salary Upon Reduction:

The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with *Paragraph (2) of Subsection F of [1-7.4.13] 1.7.4.12 NMAC.* An employee's salary should reflect appropriate placement within the pay band [~~or pay opportunity~~]. The director may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

K. Salary Upon Return To Work Or Reemployment:

The salary of former employees who are returned to work or re-employed in accordance with the provisions of *1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14*

NMAC shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay band.

L. Salary Upon Temporary Promotion:

Pay for a temporary promotion under *Subsection E of 1.7.5.12 NMAC*, will be administered in accordance with *Subsection D of [1-7.4.13] 1.7.4.12 NMAC.* The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

M. Temporary Salary Increase:

An agency may, with the approval of the director, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability and/or a higher valued job. The director may approve temporary salary increases above the maximum of the employee's current pay band [~~or pay opportunity~~]. The agency shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

N. Shift Pay:

Employees shall be paid, in addition to their regular pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m. Agencies shall notify the director of any change in this rate.

O. Salary Adjustment to Minimum:

An employee whose salary falls below the minimum of the pay band [~~or pay opportunity~~] will be adjusted in accordance with *Paragraph (2) of Subsection C of [1-7.4.12] 1.7.4.11 NMAC.*

[1.7.4.12 NMAC - Rp, 1.7.4.10 NMAC, 11/14/02; A, 7-15-05; 1.7.4.12 NMAC - Rn, 1.7.4.13 NMAC & A, 12-30-05]

[1-7.4.14] 1.7.4.13 PAY DIFFERENTIALS:

A. Temporary Recruitment Differential:

The director may authorize, in writing, a pay differential of up to fifteen percent (15%) of the position's pay band [~~or pay opportunity~~] midpoint to an employee who fills a position which has been documented as critical to the effective operation of the agency and has been demonstrated and documented to be a severe recruitment problem for the agency.

(1) A differential authorized under this provision shall be tied to the position and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary.

Agencies shall demonstrate to the office, at least biennially, the circumstances which justified the differential to determine the necessity for its continuance.

(2) A differential of more than fifteen percent (15%) of midpoint or a total salary (base pay plus differential amount) that exceeds the maximum of the pay band [or pay opportunity] may be authorized if approved by the director.

B. Temporary Retention

Differential: The director may authorize, in writing, a pay differential of up to twenty percent (20%) of the position's pay band [or pay opportunity] midpoint upon receipt of documentation indicating that the employee is in a position which has been designated as essential to the effective operation of the agency and the employee's departure would disrupt the agency's ability to fulfill its mission or the employee is in a position which has a documented history of severe retention difficulties.

(1) The agency must provide a detailed plan that outlines how they intend to resolve the problems associated with the retention difficulties.

(2) A differential authorized under this provision shall not exceed one calendar year under any circumstances and shall not result in a total (base pay plus differential amount) salary which exceeds the maximum of the pay band [or pay opportunity] without the approval of the director.

(3) Payment of this differential shall be separate from the employee's base salary.

(4) The retention differential shall be tied to the position, may not be in conjunction with a temporary recruitment differential, and may not transfer with the employee should the employee leave that position.

C. Out-of-State

Differential: The director may authorize an out-of-state differential to an employee up to the maximum of the pay band [or pay opportunity] if the agency is able to substantiate that the employee's current salary is insufficient to adequately pay an employee while working or residing out of state. Payment of this differential should be separate from the employee's base salary. A total salary (base pay plus differential amount) that exceeds the maximum of the pay band [or pay opportunity] may be authorized if approved by the director.

[1.7.4.13 NMAC - Rp, 1.7.4.11 NMAC, 11/14/02; A, 10/30/03; A, 7-15-05; 1.7.4.13 NMAC - Rn, 1.7.4.14 NMAC & A, 12-30-05]

~~[1.7.4.15]~~ 1.7.4.14 O V E R - TIME:

~~[A. Time worked in excess of 40 hours during the designated workweek shall be compensated in accordance~~

~~with the provisions of the Fair Labor Standards Act [29 U.S.C. Sections 201 to 262] for Fair Labor Standards Act covered, non-exempt employees.~~

~~B. Agencies shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.~~

~~C] A. Agencies [shall] are responsible for the [evaluate] evaluation of each employee's position and duties in order to determine their overtime status as set forth under the Fair Labor Standards Act.~~

~~[D] B. Agencies shall provide documentation [and inform] to employees as to the determination of their overtime status [and maintain the decisions on file].~~

~~[E] C. Employees have the right to appeal the determination of their overtime status according to the provisions of 1.7.6.13 NMAC. Agencies shall notify employees in writing of their appeal decision within 30 calendar days. The employee may file an appeal of the agency's decision to the director within 30 calendar days of the agency's decision. Agencies shall notify employees that their appeal to the director must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documentation describing the work currently being performed by the employee and any other relevant information. All information contained in the appeal shall be verified by the employing agency.~~

~~[F. Agencies shall notify employees in writing of their appeal decision and inform them that they have 30 calendar days in which to file an appeal of that decision with the director, at the employee's option.~~

~~G. Agencies shall notify employees that their appeal to the director must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documentation describing the work currently being performed by the employee and any other relevant information, verified by the agency.]~~

~~D. Agencies shall maintain a record on each employee containing information required by the provisions of the Fair Labor Standards Act.~~

~~E. Workweek is a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The director may approve an alternative workweek.~~

~~E. Time worked in excess of 40 hours during the designated workweek shall be compensated in accordance with the provision of the Fair Labor~~

~~Standards Act [29 U.S.C. Sections 201 to 262] for Fair Labor Standards Act covered, non-exempt employees.~~

~~G. Agencies shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.~~

~~H. Agencies shall determine the need for employees to work overtime, and [prevent unauthorized overtime work] be responsible for authorizing overtime work.~~

~~I. Paid holiday leave, annual leave, and administrative leave for voting taken in accordance with the provisions of Subsection C of 1.7.7.14 NMAC shall also count as time worked in the consideration of overtime for Fair Labor Standards Act covered, non-exempt employees.~~

~~[J. Agencies shall maintain a record on each employee containing information required by the provisions of the Fair Labor Standards Act.~~

~~[K] J. Agencies shall pay Fair Labor Standards Act covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute and shall be paid for accrued compensatory time upon separation.~~

~~[L] K. Employees not covered or exempt from the overtime provisions of the Fair Labor Standards Act may be compensated for overtime [in accordance with agency policy] if an agency's policy permits.~~

~~L. Any additional regular hours worked shall not be substituted for approved paid leave time during the same week additional regular hours were worked, [1.7.4.14 NMAC - Rp, 1.7.4.12 NMAC, 11/14/02; A, 7-15-05; 1.7.4.14 NMAC - Rn, 1.7.4.15 NMAC & A, 12-30-05]~~

~~[1.7.4.16]~~ 1.7.4.15 C A L L - BACK PAY:

~~A. Employees who are directed to return to work after completing their normal shift and before their next shift:~~

~~(1) shall be paid in accordance with the provisions of [1.7.4.15] 1.7.4.14 NMAC, if the time worked results in overtime; or:~~

~~(2) shall be paid their hourly rates, if the time worked does not result in overtime.~~

~~B. Agencies may establish a minimum number of hours to be paid when employees are called back in accordance with their agency policy. [1.7.4.15 NMAC - Rp, 1.7.4.13 NMAC, 11/14/02; 1.7.4.15 NMAC - Rn, 1.7.4.16 NMAC & A, 12-30-05]~~

~~1.7.4.17~~ **1.7.4.16****ON-CALL****PAY:**

A. In accordance with the provisions of the *Fair Labor Standards Act*, agencies shall develop a policy to compensate employees directed to remain on-call after their normal work shift.

B. Agencies shall file their on-call compensation policy with the office. Subsequent revisions to the on-call policy shall be filed with the office prior to implementation.

[1.7.4.16 NMAC - Rp, 1.7.4.14 NMAC, 11/14/02; 1.7.4.16 NMAC - Rn, 1.7.4.17 NMAC, 12-30-05]

~~1.7.4.18~~ **1.7.4.17****HOLIDAY****PAY:**

A. When an authorized holiday falls on an employee's regularly scheduled work day and the employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

B. Full-time employees, whose normal work schedule does not include the day observed as a holiday, shall be entitled to time off equal to the employee's normal workday.

C. Employees required to work on the day a holiday is observed, shall be compensated at two and one-half times their hourly rate of pay for all hours actually worked on the holiday. Such compensation shall be in the form of straight time cash payment for all hours actually worked and additional premium compensation, at the agency's discretion, of either compensatory time off or cash payment at one and one-half times the usual hourly rate of pay for all hours actually worked.

D. Part-time employees whose normal work schedule does not include the day a holiday is observed shall not be compensated for the holiday.

E. Employees who have been charged absence without leave on the workday prior to or directly following a holiday shall not be paid for the holiday.

[1.7.4.17 NMAC - Rp, 1.7.4.15 NMAC, 11/14/02; 1.7.4.17 NMAC - Rn, 1.7.4.18 NMAC, 12-30-05]

~~1.7.4.19~~ **1.7.4.18****GOVERNMENT COST SAVINGS INCENTIVE AWARDS:**

Agencies may provide cash awards to employees with the approval of the board in accordance with the provisions of *NMSA 1978, Section 10-7-12*. The director and the secretary of the department of finance and administration shall jointly issue and administer guidelines for submitting proposed awards to the board.

[1.7.4.18 NMAC - Rp, 1.7.4.16 NMAC, 11/14/02; A, 7-15-05; 1.7.4.18 NMAC - Rn, 1.7.4.19 NMAC, 12-30-05]

1.7.4.19

[Reserved]

[1.7.4.19 NMAC - Rp, 1.7.4.17 NMAC, 11/14/02; A, 7-15-05; A, 12-30-05]

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY**

**TRAINING AND RECRUITING
DIVISION**

Law Enforcement Academy

This is an amendment to 10.29.7 NMAC, Section 8 and 9, effective December 30, 2005.

**10.29.7.8 2006-2007 IN-SERVICE
TRAINING CYCLE FOR LAW
ENFORCEMENT OFFICERS**

A. ~~Twelve (12)~~ A minimum of twenty (20) hours of maintenance training/education may apply [towards] toward the 40-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. [Firearms] Four (4) hours shall be in safe pursuit procedures pursuant to Section 29-20-3 NMSA 1978. A minimum of one (1) hour shall be in domestic abuse incident training pursuant to Section 29-7-4.1 NMSA 1978. For all officers who may be involved in the arrest of DWI offenders, eight (8) hours shall be in NHTSA approved standardized field sobriety testing (SFST) protocols. For SFST instructors, sixteen (16) hours shall be in NHTSA approved SFST instructor recertification. Remaining hours may include firearms, first aid, defensive tactics, driving, and DWI measuring devices [are examples of] or other areas where periodic maintenance is measured and/or tested. Any training conducted in this area must be accredited by the academy.

B. A minimum of twenty (20) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the law enforcement officer. ~~[Any accredited advanced, specialized, departmental in-service, college, or video training would qualify.~~

C.] Of the twenty hours above, a minimum of eight (8) hours are required from one or any combination of the following subjects: cultural awareness, [stress/anger management, domestic violence,] critical incident response, ethics, legal update, [and alternative force,] first line supervision, mid-management, executive management, [and] animal cruelty [and Safe Pursuit Act], amber alert, racial profiling, homeland security, natural disaster preparedness, and identity theft. Training courses that are conducted in critical inci-

dent response or amber alert must be accredited by the academy.

~~D.]C.~~ Required training may be received through the following means.

(1) The advanced training bureau will contract for course instruction at the regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) Curriculum developed by the training and recruiting division will be provided to individual agencies upon request for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.

(4) The training and recruiting division will provide instructional video tapes which can be loaned to agencies. Agency instructors or facilitators will conduct the training using the same guidelines for other video training. Facilitator guidelines and exams will accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

~~E.] D.~~ This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

~~F.] E.~~ Implementation is to begin on January 1, ~~[2004] 2006~~. This two-year period consists of the ~~[twelve (12)] twenty (20) hours of maintenance training required in Subsection A of 10.29.7.8 NMAC, the twenty (20) hours of advanced training required in Subsection B of 10.29.7.8 NMAC, [and the eight (8) hours of training required in Subsection C of 10.29.7.8 NMAC].~~

~~G.] E.~~ Officers obtaining certification between January 1, ~~[2004] 2006~~ and December 31, ~~[2004] 2006~~, will be required to obtain one-half of the in-service training requirement. Officers obtaining certification between January 1, ~~[2005] 2007~~, and December 31, ~~[2006] 2007~~, will be required to meet the next two-year requirement which will go into effect on January 1, ~~[2006] 2008~~. This policy will apply in subsequent two-year cycles. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[1-30-93, 12-15-93, 1-17-94, 12-7-95, 10-1-97, 1-1-98, 1-1-2000; 10.29.7.8 NMAC - Rn, 10 NMAC 29.7.8, 7/1/01; A, 1/1/02; A, 6/14/02; A, 01/01/04; A, 04/15/04; A, 12/30/05]

10.29.7.9 [2004—2005] 2006-2007 TRAINING CYCLE FOR TELECOMMUNICATORS

A. Eight (8) hours of maintenance training/education may apply towards the 20-hour requirement. This is training/education which insures that previously learned knowledge, skills, and abilities of a critical nature are maintained at an acceptable level of proficiency. NCIC-NMLETs, CPR, call handling, emergency medical dispatching are examples of areas where periodic maintenance is measured and/or tested.

B. A minimum of eight (8) hours are required of advanced and specialized training/education. This is training/education which is designed to improve upon or add to the knowledge, skills, and abilities of the telecommunicator. Any accredited advanced, specialized, departmental in-service, college, or video training would qualify.

C. A minimum of four (4) hours are required from one or any combination of the following subjects: cultural awareness, stress/anger management, domestic violence, critical incident response, ethics, suicide call handling, violence in the work place~~and~~, legal update and amber alert.

D. Required training may be received through the following means:

(1) The advanced training bureau will contract for course instruction at the regional training sites.

(2) Where scheduling will allow, the training and recruiting division will assign staff to instruct the course at the regional training sites.

(3) The curriculum will be developed by the training and recruiting division and provided to individual agencies for their own certified instructors to present to their telecommunicators, provided the instructor is qualified in the subject matter.

(4) The training and recruiting division will produce instructional video tapes which can be loaned to agencies. Agency instructors will facilitate the training using the same guidelines for other video training. Facilitator guidelines and exams would accompany the video tape.

(5) Individual agencies develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

E. This five-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon telecommunicators and the opportunity to have statewide consistency in certain critical areas.

F. Implementation is to begin on January 1, ~~[2004]~~ 2006. This two-year period consists of the eight (8) hours of maintenance training required in Subsection A of 10.29.7.9 NMAC, the eight (8) hours of advanced training required in Subsection B of 10.29.7.9 NMAC, and the four (4) hours of training required in Subsection C of 10.29.7.9 NMAC.

G. Telecommunicators obtaining certification between January 1, ~~[2004]~~ 2006 and December 31, ~~[2004]~~ 2006, will be required to obtain one-half of the in-service training requirement. Telecommunicators obtaining certification between January 1, ~~[2005]~~ 2007, and December 31, ~~[2005]~~ 2007, will be required to meet the next two-year requirement which will go into effect on January 1, ~~[2006]~~ 2008. This policy will apply in subsequent two-year cycles. Telecommunicators transferring from one agency to another will carry with them the responsibility for in-service training.

[10.29.7.9 NMAC - N, 01/01/04; A, 12/30/05]

**NEW MEXICO
WORKERS'
COMPENSATION
ADMINISTRATION**

This is an amendment to 11.4.7.9 NMAC, Sections 9, 10, 15, 16 and 17, effective December 30, 2005.

11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. ~~[All hospital and FASC services, except as provided in Subsection B of this temporary rule, shall be reimbursed at the rate of 80% of the hospital ratios assigned during calendar year 2004 for all services rendered from January 15, 2005 through December 31, 2005. Any new hospital or FASC shall be assigned a ratio pursuant to Subparagraph (b) of Paragraph (4) of Subsection F of 11.4.7.9 NMAC of these rules, and the services provided by that facility will be reimbursed through December 31, 2005 at the rate of 80% of the assigned ratio for that facility.] All hospitals shall be reimbursed at the hospital ratio itemized in the official WCA listing that becomes effective on December 31, 2005, reflecting a 5% decrease from the temporary 2005 ratio for all services rendered from December 31, 2005, through December 31, 2006, except as provided in Subsection B of this temporary rule. Any new hospital shall be assigned a ratio of 67%.~~

(1) The assigned ratio is applied

toward all charges for compensable services provided during a hospital inpatient stay, emergency department visit and outpatient hospital surgery.

(2) This ratio does not include procedures that are performed in support of surgery, even if performed on the same day and at the same surgical site as the surgery.

(3) Appeal of assigned ratio by hospitals:

(a) A written appeal may be filed with the director within thirty (30) days of the assignment of the ratio. The administration will review the appeal and respond with a written determination. The administration may require the hospital to provide additional information prior to a determination.

(b) If the hospital is not satisfied with the administration's written determination, within ten (10) calendar days of the date of the determination, the hospital may request that a formal hearing be set and conducted by the director. The director's rulings in all such formal hearings shall be final.

B. The following services and items will be reimbursed as specified, commencing with services provided on or after 12:01 A.M. ~~[January 1, 2005]~~ December 31, 2005:

(1) Implants and hardware implanted or installed during surgery in the setting of a hospital ~~[or FASC]~~ shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGRt.

(2) The professional and technical charges for radiology and pathology/laboratory services provided in a hospital ~~[or FASC]~~ shall be paid at rates equivalent to those set forth in the most current version of the MAP. The hospital ~~[or FASC]~~ shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

C. All hospitals ~~[and FASCs]~~ shall provide to the WCA:

(1) the most recent ~~[audited financial statement]~~ full year filing of their HCFA/CMS 2552 G-2 worksheet prepared on behalf of the organization, by February 1, ~~[2005]~~ 2006; ~~[and within 30 days of the date of preparation of any subsequently produced audited financial statement;~~

(2) the most recent HCFA/CMS 2552 form prepared by or on behalf of the organization by February 1, 2005 and within 30 days of the date of preparation of any subsequently produced form;

(3) the most recent AHA Annual Survey Health Form, L.L.C. prepared by or on behalf of the organization, by February 1, ~~2005~~ and within 30 days of the date of

~~preparation of any subsequently produced AHA annual survey health form, L.L.C.;~~

~~(4) (2) any hospital [or FASC] may specifically designate [pages of the required audit documents and forms] this worksheet as proprietary and confidential; any [pages] worksheet specifically designated as proprietary and confidential in good faith shall be deemed confidential pursuant to NMSA 1978, Section 52-5-21 and the rules promulgated pursuant to that provision.~~

~~(3) Failure to comply may result in fines and penalties.~~

D. All provisions of 11.4.7 NMAC contrary to the provisions set forth in this temporary rule are deemed void and inoperative during the effective period of this rule.

~~[E. Subsections A-D of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. December 31, 2005, and shall be of no force or effect with respect to any services provided thereafter.~~

F. Assigned ratio discount method for hospitals and FASCs

~~(1) The assigned ratio is applied toward all charges for compensable services provided during a hospital inpatient stay, emergency department visit, outpatient surgery, or FASC visit.~~

~~(2) This ratio does not include procedures that are performed in support of ambulatory surgery, even if performed on the same day and at the same surgical site as the surgery.~~

~~(3) Filing requirements~~

~~(a) All hospitals and FASCs shall annually file, in accordance with generally accepted accounting principals, a complete and correct workers' compensation ratio report worksheet, even if the hospital or FASCs calculated ratio is anticipated to be less than 0.8. Filing shall be accomplished by actual delivery to the medical cost containment bureau or by deposit in the US mail with first class postage attached.~~

~~(b) Hospitals and FASCs with fiscal years ending January 1 through June 30 shall file a ratio report no later than January 15 of the next calendar year.~~

~~(c) Hospitals and FASCs with fiscal years ending July 1 through December 31 shall file a ratio report no later than July 15 of the next calendar year.~~

~~(d) Upon any change in its documented fiscal year currently on file with the administration, each hospital or FASC shall file a "fiscal year reporting form". (See Appendix E).~~

~~(e) A hospital or FASC failing to file the information required by this subsection by the due date above will be assigned a workers' compensation ratio of .80 which will remain in effect until the next required annual filing. All information required by these rules must be provided in order for the~~

~~filing to be considered complete.~~

~~(f) All filings must be submitted to the director of the WCA.~~

~~(g) Repeated failures to file on a timely basis may subject the violator to administrative penalties in addition to any other remedies provided by these rules. For purpose of this rule, each 30 day period of continuous violation constitutes a separate offense.~~

~~(4) Special provisions for new hospitals~~

~~(a) Upon receipt of its license from the New Mexico department of health, a new hospital or FASC shall notify the director of its status, including the date it commenced operation and the beginning and ending dates of its fiscal year.~~

~~(b) New hospitals or FASCs shall be assigned a workers' compensation ratio of .90 until the hospital or FASC has filed its first required ratio report and has been assigned a new ratio and effective date by the WCA.~~

~~(5) Calculation of a workers' compensation ratio~~

~~(a) Based on information filed pursuant to Paragraph (3) of Subsection A of 11.4.7.9 NMAC, above, the administration will calculate and assign a specific workers' compensation ratio for each hospital or FASC seeking reimbursement for compensable hospital services and items. The hospital or FASC shall be notified by mail of the assigned ratio that shall be effective upon the date assigned by the administration. The workers' compensation ratio is calculated as follows:~~

~~[ADJUSTED RATIO] ÷ [ADJUSTED OPERATING EXPENSES]~~

~~ADJUSTED NET REVENUE~~

~~(b) The assigned ratio shall not be less than .80 and shall not be greater than 1.00.~~

~~(c) Any previously assigned ratio shall remain in full force and effect until a new ratio and effective date are assigned by the administration pursuant to these rules.~~

~~(d) All hospitals and FASCs are responsible for notifying payers of any changes in their workers' compensation ratio. All bills must have the assigned ratio on them.~~

~~(6) Appeal of assigned ratio by hospital or FASC~~

~~(a) A written appeal may be filed with the director. The administration will review the appeal and respond with a written determination. The administration may require the hospital or FASC to provide additional information prior to a determination.~~

~~(b) If the hospital or FASC is not satisfied with the administration's written determination, within ten (10) calendar days of the date of the determination, the hospi-~~

~~tal or FASC may request that a formal hearing be set and conducted by the director. The director's ruling in all such formal hearings shall be final.]~~

E. Method of payment for FASCs:

~~(1) All FASCs will provide global billing by CPT code and shall be paid by the assigned MAP value times 1.5 effective for services from December 31, 2005, to December 31, 2006. Multiple surgical procedures will be billed in accordance with Subparagraphs (a) and (b) of Paragraph (8) of Subsection G of 11.4.7.9 NMAC.~~

~~(2) Implants and hardware implanted or installed during surgery in the setting of a FASC shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR.~~

~~(3) The professional and technical charges for radiology and pathology/laboratory services provided in a FASC shall be paid at rates equivalent to those set forth in the most current version of the MAP. The FASC shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.~~

~~[E. Subsections A-E of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. December 31, 2006, and shall be of no force or effect with respect to any services provided thereafter.~~

G. Maximum allowable payment method

~~(1) Basic provisions~~

~~(a) These rules apply to all charges for medical and other health care treatment provided on an outpatient basis, including procedures that are performed in support of ambulatory surgery, even on the same day and at the same site as the surgery.~~

~~(b) The MAP is procedure-specific and provider-neutral. Any code listed in the edition of the *Physicians Current Procedural Terminology* adopted in the director's annual order may be used to designate the services rendered by any qualified practitioner within the parameters set by that practitioner's licensing regulatory agencies combined with applicable state laws, rules, and regulations.~~

~~(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the director shall issue an order not less than once per annum setting the schedule of maximum allowable payments for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule shall be released to the public not less than 30 days prior to the date upon which it~~

is adopted and public comments will be accepted during the 30 days immediately following release. After consideration of the public comments the director shall issue a final order adopting a fee schedule, which shall state the date upon which it is effective. The final fee schedule order shall be available at the WCA clerk's office not less than ten days prior to its effective date.

(2) Evaluation and management (E/M) services:

(a) The definition for "new patient" is unique to New Mexico, differing from the definition presented in the Physicians' Current Procedural Terminology. (See Subsection EE of 11.4.7.7 NMAC)

(b) E/M CPT codes shall not be pro-rated.

(3) Independent medical examinations

(a) All IMEs and their fees must be authorized by the claims payer prior to the IME scheduling and service, regardless of which party initiates the request for an IME. In the event of an IME ordered by a judge, the judge will set the fee.

(b) In the event a worker fails to provide 48 hours' notice of cancellation of an IME appointment, the HCP may be reimbursed either 60% of the pre-approved fee or up to 60% of the HCP's usual and customary fee if a fee was not pre-approved. "Missed IME" should be written next to the code.

(4) Physical impairment ratings

(a) All PIRs and their fees shall be authorized by the claims payer prior to their scheduling and performance regardless of which party initiated the request for a PIR. The PIR is inclusive of any evaluation and management code.

(b) Impairment ratings performed for primary and secondary mental impairments shall be billed using CPT code 90899 (unlisted psychiatric service/procedure) and shall conform to the guidelines, whenever possible, presented in the most recent edition of the AMA Guides to the Evaluation of Permanent Impairment.

(c) A PIR is frequently performed as an inherent component of an IME. Whenever this occurs, the PIR may not be unbundled from the IME. The HCP may only bill for the IME at the appropriate level.

(d) In the event that a PIR with a specific HCP is ordered by a judge and the HCP and claims payer are unable to agree on a fee for the PIR, the judge may set the fee or take other action to resolve the fee dispute.

(5) Physical medicine and rehabilitation services

(a) It shall be the responsibility of the physical medicine/rehabilitation provider to notify the claims payer of a

referral prior to commencing treatment.

(b) The appropriate CPT code must be used for billing by practitioners.

(c) Services provided by caregivers (e.g., technicians, exercise physiologists) must be pre-authorized and paid pursuant to Paragraph (13) of Subsection [B] G of 11.4.7.9 NMAC.

(d) In the event a worker fails to provide 48 hours notice of cancellation of an FCE appointment, the practitioner may be reimbursed up to 60% of the MAP for a four-hour appointment.

(6) Materials supplied under CPT code 99070

(a) Supplies and materials must be itemized.

(b) Supplies and materials are reimbursed at the practitioner's invoice cost plus 25%, plus tax, shipping and handling charges.

(c) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(7) Service component modifiers — radiology and pathology/laboratory

(a) Use of the technical and professional component modifier codes are required for the billing of all radiology and pathology/laboratory procedures. The CPT code followed by "TC" is the appropriate billing code for the technical component.

(b) The dollar value listed as the MAP for a specific radiology or pathology/laboratory procedure represents the combined maximum allowable payment for both the technical and professional components of that procedure:

(i) The entity billing for the technical component shall be paid at no more than 60% of the MAP for the procedure when the service is provided on an inpatient or outpatient basis.

(ii) The entity billing for the professional component shall be paid at no more than 40% of the MAP for the billed procedure, whether the service was provided on an inpatient or an outpatient basis.

(8) Surgical modifiers

(a) Bilateral procedure "-50"

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the MAP.

(ii) The second procedure shall be coded with the same CPT code plus the "-50" modifier code and shall be paid at no more than 50% of the MAP.

(b) Multiple procedures "-51"

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the MAP.

(ii) The second and third procedure shall be coded with the respective CPT code plus the "-51" modifier code and shall be paid at 50% of the MAP.

(iii) The fourth and subsequent procedures will be paid BR.

(c) Assistant surgeon "-80"

(i) The attending surgeon shall bill using the appropriate CPT code(s) and modifiers, if applicable, for the procedure(s) performed and shall be paid at the lesser of the billed charges or the MAP, subject to the percentages for modifiers in this section.

(ii) The assistant surgeon shall bill using the appropriate CPT codes(s) plus the modifier for the procedures performed and shall be paid at no more than 25% of the MAP.

(9) Unlisted services or procedures are billable and payable on a BR basis.

(10) Performance of BR services.

(a) The fee for the performance of any BR service is negotiated between the practitioner and the payer prior to delivery of the service. Payers should ensure that a CPT code with an established MAP is not available.

(b) Performance of any BR service requires that the practitioner submit a written report with the billing to the payer.

(i) The report shall substantiate the rationale for not using an established CPT code.

(ii) The report shall include pertinent information regarding the nature, extent, and special circumstances requiring the performance of that service and an explanation of the time, effort, personnel, and equipment necessary to provide the service.

(iii) Information provided in the medical record(s) may be submitted in lieu of a separate report if that information satisfies the requirements of Paragraph (1) of Subsection D of 11.4.7.10 NMAC.

(iv) No separate charge is allowed for the report.

(v) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the practitioner shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the payer to show why the proposed fee is not reasonable.

(vi) Any disputes shall be submitted pursuant to Section 13 of this rule.

(11) Special reports shall be billed with CPT code "99080" and the descriptor "special report". The form letter to health care provider is a special report. The MAP is \$45.

(12) The use of global fees is

encouraged, however global fee shall not be used unless payer and provider agree. Agreement for use of a global fee may be sought and obtained before, during or after provision of services. All services not covered by the global fee shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(13) Caregiver services are subject to the payer's pre-authorization prior to the scheduling and performance of any service. All services provided by caregivers are paid BR.

(14) Durable medical equipment (DME) shall be pre-authorized by the payer. However, reasonable and necessary prosthetic/orthotics training and/or adjusting is excluded from the cost of the DME and may be billed separately.

(a) Rental of DME shall not exceed 90 days unless it is determined by the payer to be more cost efficient to do so.

(b) Rental fees shall not exceed the cost of purchase established in the Subparagraph, below. Rental fees paid for the first 30 days of rent may be applied against the purchase price. Subsequent rental fees may not be applied against the purchase price. The decision to purchase should be made within the first 30 days of rental.

(c) Purchases of DME are paid at the practitioner's invoice cost plus 25% plus taxes, shipping and handling charges.

(d) A copy of the invoice shall be provided either at the time of billing or upon the payer's request.

(15) Prorating

(a) The prorating of the practitioner's fees for time spent providing a service, as documented in the provider's treatment notes, is not prohibited by these rules; provided however, that EOB — 13 is sent to the practitioner. (See item (iii) of Subparagraph (e) of Paragraph (4) of Subsection C of 11.4.7.11 NMAC).

(b) The practitioner's fees should not be prorated to exclude time spent in pre- and post-treatment activity, such as equipment setup, cleaning, disassembly, etc., if it is directly incidental to the treatment provided and is adequately documented.

(16) Referrals

(a) If a referral is made within the initial sixty (60) day care period as identified by NMSA 1978, Section 52-1-49(B), the period is not enlarged by the referral.

(i) When referring the care of a patient to another provider, the referring provider shall submit complete medical records for that patient, upon request of the referral provider, at no charge to the patient, referral provider or payer.

(ii) When transferring

the care of a patient to another provider, the transferring provider shall submit complete medical records for that patient to the subsequent provider at no charge to the patient, subsequent provider or payer.

(b) If, subsequent to the completion of a consultation, a referral is made to the consultant for the assumption of responsibility for the management of a portion or all of the patient's condition(s), the following procedures apply:

(i) Follow up consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) Only established patient codes shall be used.

(c) If a practitioner who has been requested to examine a patient assumes responsibility immediately for primary provision of the patient's care, it shall be considered a referral and not a consultation.

(i) Consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) For the first visit only, a new patient code may be used.

(iv) HCPs and caregivers may negotiate with the payer, prior to performing the service, regarding the use of consultation codes in appropriate circumstances.

(17) Physical therapy

(a) New Mexico specific codes are no longer in use. Please consult the fee schedule currently in use for specific codes. Evaluation and management codes are not appropriate for this purpose.

(b) Physical therapy bills may include all codes which are reasonable and necessary for the evaluation and treatment of a worker in a single day.

(c) An initial failed appointment, without providing 48 hours' notice to the physical therapist, may be billed at 60% of the MAP.

(18) Failed appointments

(a) An initial failed appointment, when the new patient fails to provide 48 hours notice to the HCP, may be billed at the level of a new outpatient/expanded problem focused H&E/low to moderate severity/straightforward medical decision making/evaluation and management service, using CPT code 99202 and annotated as "FAILED INITIAL APPOINTMENT/NEW PATIENT"

(b) A failed appointment by an established patient may not be billed.

(19) Facility fees

(a) Charges for the use of a room for other than an emergency room [visiting] visit or operating and recovery rooms for inpatient or outpatient hospital surgery are prohibited by these rules.

(b) For instances of outpatient

services, where two or more HCPs combine in delivery of the service, the maximum total payment is based on the MAP for the specific service. The HCPs may allocate the payment among themselves.

(20) Charges for copies of radiographic film (X-rays) may be billed to the requestor by the X-ray facility following by report (BR) procedures.

(21) Second medical opinions requested by a party are deemed medically reasonable and necessary for payment purposes.

H. Pharmacy maximum allowable payment (Pharm MAP) is based upon the maximum payment that a pharmacy or authorized HCP is allowed to receive for any prescription drug, not including NMGRT.

(1) Basic provisions

(a) Pharmacies and authorized HCPs must include patient identification and information. No specific form is required.

(b) Any medications dispensed and administered in excess of a 24-hour supply to a registered emergency room patient shall be paid according to the MAP.

(c) Any nationally recognized publication, issued not less frequently than monthly, which lists the AWP, may be used to determine the AWP.

(d) Any bill that is submitted without an NDC number will be paid at the lowest AWP available for the month in which the drugs were dispensed.

(e) No more than a 30-day supply of medication shall be dispensed, unless authorized by the payer. Where possible, a generic equivalent shall be prescribed over brand name medication, unless specifically ordered by an HCP.

(2) Average wholesale price (AWP)

(a) The date that shall be used to determine the AWP and calculation of the Pharm MAP shall be the date on which the drugs were dispensed, regardless of AWP changes during the month.

(b) Use of a prorated calculation of AWP will often be necessary in the formulas. For each drug dispensed, the prorated AWP shall be based on the AWP for the "100s ea" quantity of the specific strength of the drug, as listed in a nationally recognized publication, with the following exceptions:

(i) If an AWP listed in the publication is based on the exact quantity of the drug dispensed, e.g., #15, #60, 15 ml, 3.5 gm, etc., the AWP for the exact quantity shall be used with no prorating calculation made.

(ii) If the drug is dispensed as a quantity based on volume (grams, ounces, milliliters, etc.) rather than single units ("ea"), the prorated AWP shall

be calculated in accordance with the highest quantity (volume) listed for the specific strength of drug.

(iii) Subject to items (i) and (ii) of Subparagraph (b) of Paragraph (2) of Subsection C of 11.4.7.9 NMAC, in cases of a conflict between referenced publications, the lower price shall prevail.

(3) Formulas

(a) The formula for billing of brand name prescription drugs is: Pharm MAP(\$)= (\$ AWP x 1.04 + \$6.50).

(b) The formula for billing of generic prescription drugs is: Pharm MAP(\$)= (\$ AWP x 1.04 + \$8.06).

I. Qualification of out of state health care providers

(1) An HCP that is not licensed in the state of New Mexico must be approved by the director to qualify as an HCP under the Act.

(2) No party shall have recourse to the billing and payment dispute resolution provisions of these rules with respect to the services of an HCP who is not licensed in New Mexico or approved by the director.

(3) The director's approval may be obtained by submitting a written motion and order, supported by an original affidavit of the HCP seeking approval, on forms acceptable to the director. Nothing in this rule shall prevent the director from entering into agreements with any party or HCP to provide for simplified and expeditious qualification of HCPs in individual cases, provided, however, that all such agreements shall be considered public records.

(4) The director's approval of a health care provider in a particular case, pursuant to the provisions of Section 52-4-1, will be deemed given when an out of state health care provider provides services to that injured worker and the employer/insurer pays for those services. The approval obtained by this method will not apply to the provision of health care by that provider to any other worker, except by obtaining separate approval as provided in these rules. [01-24-91, 4-1-91, 12-30-91, 12-31-91, 1-18-92, 10-30-92, 1-15-93, 10-28-93, 2-23-94, 3-14-94, 12-2-94, 1-31-95, 8-1-96, 9-1-96, 8-15-97, 4-30-98, 10-01-98, 6-30-99; 11.4.7.9 NMAC - Rn & A, 11.4.7.9 NMAC, 8-07-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05]

11.4.7.10 BILLING PROVISIONS AND PROCEDURES

A. Basic provisions

(1) Balance billing is prohibited.

(2) Unbundling is prohibited.

(a) If a service that is ordinarily a component of a larger service is performed alone for a specific purpose it may be considered a separate procedure for coding, billing, and payment purposes.

(b) Documentation in the medical

records must justify the reasonableness and necessity for providing such services alone.

(3) The patient/worker shall not be billed for health care services provided by an authorized HCP as treatment for a valid workers' compensation claim except as provided in Subparagraphs (a) or (b) of Paragraph (2) of Subsection A of 11.4.7.13 NMAC.

(4) All reasonable and necessary services provided to a patient/worker with a valid workers' compensation claim shall be paid by the employer or the employer's representative on behalf of the employer.

(5) If a service has been pre-authorized or is provided pursuant to a treatment plan that has been pre-authorized by an agent of the payer, it shall be rebuttably presumed that the service provided was reasonable and necessary. The presumption may be overcome by competent evidence that the payer, in the exercise of due diligence, did not know that the compensability of the claim was in doubt at the time that the authorization was given.

(6) Timeliness

(a) Initial billing of outpatient services by practitioners, other than hospitals and FASC's, shall be postmarked no later than 30 calendar days from the date of service.

(b) Initial billing of outpatient services by hospitals and FASCs shall be postmarked within 30 days from the end of the month in which services were rendered.

(c) Initial billing of inpatient services shall be issued no later than 60 calendar days from the date of discharge.

(d) Failure of the practitioner to submit the initial billing within the time limits provided by these rules shall constitute a violation of these rules but does not absolve the employer of financial responsibility for the bill.

B. Billing forms have been adopted from the US department of health and human services' health care financing administration.

(1) Billing for services calculated according to the ratio discount method must be on a UB-92 CMS-1450. This includes inpatient services[,] and emergency room services [, and FASC visits].

(2) Billing for services calculated according to the MAP and provided by hospitals and FASCs may be on form UB-92, CMS-1450 or form CMS-1500.

(3) Billings for all outpatient services calculated according to the MAP must be on form CMS-1500.

(4) Pharmacies and authorized HCPs must include patient identification and appropriate information. Billings for pharmaceuticals requires no specific form.

(5) Completion of forms

(a) "WORKERS' COMPENSATION" or "WORK COMP" shall be clearly

printed or stamped at the top of the billing form. Any subsequent billing for the same service(s) must be clearly labeled "TRACER" or "TRACER BILL" at the top of the billing form and may be a copy of the original bill.

(b) Entry of the applicable CPT code and a descriptor are mandatory for each procedure billed, regardless of which form or itemized statement is utilized.

(c) FORM CMS-1500 (12/90) information required for completion is self-explanatory with the following exceptions:

(i) Sections 6, 9, 11a-d, 12, 13, 17a, 19, 22, 23, 24h-k, and 27 are not applicable.

(ii) Section 1. Check "Other".

(iii) Section 1a. Enter patient's social security number.

(iv) Section 4. Enter employer's name.

(v) Section 7. Enter employer's address and telephone number.

(vi) Section 11. Name of workers' compensation insurance carrier or self-insured employer or third party administrator.

(vii) Section 21. Enter ICD-9-CM or DSM code and descriptor for each diagnosis.

(viii) Section 24d. Entry of a specific CPT code, any applicable modifier and the descriptor is mandatory for each procedure/service billed.

(ix) Section 26. Optional

(x) Section 28. Multiple page bills should show the cumulative total in Section 28 of each consecutively numbered page, with the combined total for all pages on the last page.

(xi) Section 29. This section may be used to indicate any agreed upon discount amount or rate.

(xii) Section 30. This section may be used to indicate the amount due after applying any discounts. Otherwise, leave it blank.

(xiii) Anesthesiologists and laboratories may omit Sections 14, 15, and 16.

~~[(d) FORM CMS 1450 (UB 92) is self explanatory with the following exceptions:~~

~~(i) Locators 7, 8, 9, 10, 11, 31, 33, 34, 35, 36, 37, 38, 44, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 62, 63, 64, 79, and 84 are not applicable.~~

~~(ii) Locator 1. Practitioner name, address, and telephone number~~

~~(iii) Locator 2. Site of service name and address~~

~~(iv) Locator 3. Account number or invoice number~~

~~(v) Locator 4. Enter~~

~~code 111 for inpatient; 131 for outpatient and for emergency room; or 831 for FASC. (Note: if Locator 42 contains an entry beginning with "45" then the service was emergency room, not outpatient.)~~

~~(vi) Locators 24—30. Use condition code 02 for employment related injury.~~

~~(vii) Locator 32. Use occurrence code 04 for accident/employment related injury.~~

~~(viii) Locator 43. List and describe each compensable service and item being billed.~~

~~(ix) Locator 50. Insurance carrier or self-insured employer or third party administrator~~

~~(x) Locator 78. The practitioner's current workers' compensation ratio]~~

~~(d) Form CMS-1450 (UB-92) must be completed by health care facilities:~~

~~(i) Locators that are optional on the UB-92 are 8, 9, 10, 11, 31, 33, 34, 35, 36, 37, 38, 48, 49, 51, 52, 53, 54, 55, 57, 59, 64, 79, and 84.~~

~~(ii) The following locators on the UB-92 must be completed by the health care facilities: 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24-30, 32, 42, 43, 44, 47, 50, 56, 58, 60, 65, 67, 76, 78, 80.~~

~~(iii) Locator 1. Practitioner name, address, and telephone number.~~

~~(iv) Locator 2. Site of service – name and address.~~

~~(v) Locator 3. Account number or invoice number.~~

~~(vi) Locator 4. Enter Code 111, 115, 117, 121, 125, 127, 851, 855, or 857 for inpatient; 131, 135, 137 for outpatient and for emergency room; 831 for FASC. (Note: if Locator 42 contains an entry beginning with "45", then the service was emergency room, not outpatient.)~~

~~(vii) Locator 5. Hospital federal tax identification number.~~

~~(viii) Locator 6. Statement coverage dates must be provided.~~

~~(ix) Locator 7. Covered days – the days during the billing period applicable to the cost report.~~

~~(x) Locator 12. Injured worker's name.~~

~~(xi) Locator 14. Injured worker's birth date.~~

~~(xii) Locator 17. Date of admission to hospital or facility.~~

~~(xiii) Locator 19. Type of admission., code values: 1 = emergency, 2 = urgent, 3 = elective, 5 = trauma center, 9 = information unavailable.~~

~~(xiv) Locator 20. Source of admission code values: 1 = physician referral, 2 = clinic referral, 3 = HMO referral, 4 = hospital transfer, 6 = transfer from HCF, 7 = ER, 8 = law enforcement, 9 = unavailable, A = transfer from (CAH).~~

~~(xv) Locator 22. Patient status: code values (01-76).~~

~~(xvi) Locator 23. Health care provider medical record number.~~

~~(xvii) Locators 24-30. Use condition code 02 for employment related injury.~~

~~(xviii) Locator 42. Revenue codes for services billed. (Note: revenue code (0001) must be provided in column 42 for total charges.)~~

~~(xix) Locator 43. Lists and describes each medical service and item being billed corresponding to revenue code applicable.~~

~~(xx) Locator 44. Accommodation rate for applicable services provided.~~

~~(xxi) Locator 47. Billed charges. Information based on service provided (revenue code). (note: last revenue code in column 42 must be 0001 for non-electronic filers.)~~

~~(xxii) Locator 50. Insurance carrier, self-insurer or TPA (claims administrator).~~

~~(xxiii) Locator 56. DRG (diagnosis related group). Code used by Medicare to group medical services provided by inpatient hospital services. Required for type of bill = 111, 115, 117, 121, 125, 127, or inpatient for CAH codes 851, 855 and 857.~~

~~(xxiv) Locator 58. Insured's name – patient's name or employer's name.~~

~~(xxv) Locator 60. SSN of injured worker or worker's identification number.~~

~~(xxvi) Locator 65. Employer's Name.~~

~~(xxvii) Locator 67. Principle diagnosis code must be based on ICD-9-CM. Code must include all five digits.~~

~~(xxviii) Locator 68-75. Other diagnosis codes are based on ICD-9-CM. These codes are sent to payer if available.~~

~~(xxix) Locator 78. The health care facilities current workers' compensation ratio.~~

~~(xxx) Locator 80. Principle procedure code and date: The HCP enters the ICD-9-CM code for the inpatient principle procedure. The principle procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, which is necessary to take care of a complication. The code should relate closely to the principle diagnosis. A date should also be provided.~~

~~(6) The health care facility is required to submit all requested data to the payer. Failure to do so could result in fines and penalties imposed by the WCA. All payers are required to notify the economic research bureau of unreported data fields within 10 days of payment of any inpatient bill.~~

~~C. New Mexico gross receipts tax (NMGRT): Practitioners whose corporate tax status requires them to pay NMGRT shall bill for NMGRT in one of the~~

following ways:

(1) Indicate via a printed or stamped statement adjacent to the combined "total charges" that the individual charges and total charges include NMGRT at the specific percentage applicable to the practitioner.

(2) Make no mention of NMGRT, in which case the bill shall be paid at the lesser of the MAP or the billed amount.

(3) Itemize the actual amount of the NMGRT below the combined "total charges" amount for all billed services and items, indicating the specific tax rate (percent) applicable to the municipality or county location of the practitioner; and, add this amount to the combined "total charges" to derive a "total amount billed".

D. Medical records

(1) Initial bills for every visit shall be accompanied by appropriate office notes (medical records) which clearly substantiate the service(s) being billed and are legible.

(2) No charge shall be made to any party to the claim for the initial copy of required information. Second copies provided shall be charged and paid pursuant to Subsection A of 11.4.7.15 NMAC.

(3) A charge may be made to the requesting party to the claim for second and subsequent copies of any medical records.

(4) No charge shall be made for provision of medical records to the WCA's utilization review/case management/peer review contractor for required information.

(5) Records for hospitals and FASCs [~~for services paid according to the assigned ratio~~] shall have a copy of the admission history and physical examination report and discharge summary, hospital emergency department medical records, ambulatory surgical center medical records or outpatient surgery records.

[4-1-91, 12-31-91, 11-18-92, 1-15-93, 10-28-93, 3-14-94, 12-2-94, 11-18-94, 12-31-94, 8-1-96, 10-01-98; 11.4.7.10 NMAC - Rn, 11 NMAC 4.7.10, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05]

11.4.7.15 NON-CLINICAL SERVICES

A. A practitioner may charge up to \$1.00 per page for the first 10 pages and up to \$0.20 for each page thereafter for copying medical records and reports, except as provided in Subsection D of 11.4.7.10 NMAC. This fee is inclusive of any and all fees, including, but not limited to, administrative, processing, and handling fee of any kind.

B. A practitioner may charge up to \$45.00 for completion of the form letter to health care provider.

C. Depositions

(1) An HCP may not charge more than four hundred dollars (\$400) for the first hour or any portion thereof; and not more

than three hundred sixty dollars per hour (\$360/hour) for the second and subsequent hours, prorated in five-minute increments.

(2) No compensation shall be paid for travel time to or from the deposition, waiting time prior to the scheduled beginning of the deposition, time spent reading or correcting depositions or preparation time. For good cause shown, a judge may enter a written order providing recompense to an HCP for reading and correcting a deposition.

(3) An HCP may require that they be paid for the first hour of the deposition testimony either before or at the time of the deposition.

(4) A non-refundable fee of up to four hundred dollars (\$400) may be charged by an HCP for deposition appointments at which the attorney making the appointment is a no-show or fails to cancel at least ~~twenty-four (24)~~ fourty-eight (48) hours in advance.

(5) Any notice of deposition to a practitioner shall contain the following language: "The rules of the WCA provide a schedule of maximum permissible fees for deposition testimony. No more than four hundred dollars (\$400.00) for the first hour and three hundred sixty dollars (\$360.00) for each subsequent hour is permitted. Fees for the second and subsequent hours shall be prorated in five minute increments."

D. Live testimony by a health care provider: Such testimony is allowed only pursuant to an order by a judge.

(1) Fees for live testimony shall be set by the judge.

(2) Travel and lodging expenses shall be limited by order of the judge.

(3) No fee for preparation time may be charged or collected.

E. The party paying for medical treatment shall pay the fees set forth in this rule. Ultimate responsibility for payment for copies of medical records and reports shall be determined pursuant to Part 4 of these rules pertaining to discovery costs.

F. When a dispute arises regarding compliance with this non-clinical fee schedule any party, or the judge, may request a hearing to determine compliance with this rule.

(1) If a hearing to determine compliance is requested, or on the judge's own motion, the judge shall enter an order confirming or denying compliance with this rule.

(2) The judge's order may assess costs, expenses, and attorney fees against a non-complying party or practitioner.
[10-15-90, 8-1-96, 10-1-98, 6-30-99; 11.4.7.15 NMAC - Rn, 11 NMAC 4.7.15, 8-30-02; A, 12-30-05]

11.4.7.16 ENFORCEMENT: Any complaint of a violation of these rules shall be made, in writing, to the WCA ~~[deputy director for operations]~~ director through the medical cost containment bureau chief.

[12-31-91, 8-1-96, 10-01-98; 11.4.7.16 NMAC - Rn, 11 NMAC 4.7.16, 8-30-02; A, 1-14-04; A, 12-30-05]

11.4.7.17 DATA ACQUISITION:

A. ~~[The following language seeks to clarify 11.4.7.17 NMAC, which has always required that the data listed below be submitted to the workers' compensation administration. The submission requirement should be altered to include and require the following. It is the intent of the administration to enforce this already existing rule retrospectively. Under this explanation, no new obligations will exist.]~~ All workers' compensation payers shall submit required paid inpatient services data by January 1, 2006, for the period July 1, 2005, through September 30, 2005. Thereafter, payers shall submit required paid inpatient services data on a quarterly basis as follows:

(1) October 1 through December 31 by April 1;

(2) January 1 through March 31 by July 1;

(3) April 1 through June 30 by October 1; and,

(4) July 1 through September 30 by January 1.

B. The paid inpatient services data shall be submitted in a format acceptable to the WCA. The economic research bureau shall distribute a specific set of instructions ~~[annually]~~ for the submission of required data. ~~[If required data is not available from payer, payer must submit in writing an explanation of what data is not available, and a schedule for meeting data requirements by January 1 of each year, beginning with January 1, 2006.]~~

C. If the required paid inpatient services data is not received from payer, ~~[or a waiver on data requirements is not granted by the economic research bureau after all appeals and extensions of time for required data have been exhausted,]~~ the economic research bureau may petition for a hearing before the WCA director or his designee and seek penalties pursuant to NMSA 1978, section 52-1-61 (1991).

[3-14-94, 8-1-96; 11.4.7.17 NMAC - Rn, 11 NMAC 4.7.17, 8-30-02; A, 1-14-04; A/E, 7-5-05; A/E, 7-28-05; A, 12-30-05]

**NEW MEXICO
OFFICE OF WORKFORCE
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11.2.4 NMAC, Workforce Investment Act (WIA) Program Policies and State Technical Assistance Guide (STAG) System, filed 6/13/2003 is being repealed and replaced by 11.2.4 NMAC, Rule Making Procedures, effective 12/31/2005.

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITA's), filed 6/16/200 is being repealed and replaced by 11.2.8 NMAC, Workforce Investment Act (ITA's), effective 12/31/2005.

11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed 6/23/2000 is being repealed and replaced by 11.2.26 NMAC, WIA Program Complaint Resolution Procedure and Procedure for Reporting Criminal Fraud and Abuse and 11.2.27 NMAC, WIA Equal Opportunity Requirements and Discrimination Complaint Resolution Procedures, effective 12/31/2005.

**NEW MEXICO
OFFICE OF WORKFORCE
TRAINING AND
DEVELOPMENT**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 4 WORKFORCE
INVESTMENT ACT (WIA) RULE
MAKING PROCEDURES**

11.2.4.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD).
[11.2.4.1 NMAC - Rp, 11.2.4.1 NMAC, 12/31/05]

11.2.4.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs), and all SAE WIA subrecipients.
[11.2.4.2 NMAC - Rp, 11.2.4.2 NMAC, 12/31/05]

11.2.4.3 STATUTORY AUTHORITY: Workforce Development Act, Chapter 50, Article 14, NMSA 1978.
[11.2.4.3 NMAC - Rp, 11.2.4.3 NMAC, 12/31/05]

11.2.4.4 DURATION:

Permanent.

[11.2.4.4 NMAC - Rp, 11.2.4.4 NMAC, 12/31/05]

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

[11.2.4.5 NMAC - Rp, 11.2.4.5 NMAC, 12/31/05]

11.2.4.6 OBJECTIVE: To establish general provisions for rulemaking for administration of the Workforce Investment Act (WIA).

[11.2.4.6 NMAC - Rp, 11.2.4.6 NMAC, 12/31/05]

11.2.4.7 DEFINITIONS: [RESERVED]

11.2.4.8 ACTION: References include the following: Public Law 105-220, Workforce Investment Act (WIA), NMSA 1978, Section 14-4-1 *et seq.*, and NMSA 1978, Section 50-14-1 *et seq.*

A. The state administrative entity (SAE) and the local workforce development boards (LWDBs) established pursuant to NMSA 1978, Section 50-14-5 are agencies subject to the provisions of the State Rules Act.

B. Under WIA, the governor acting through the SAE and the local workforce development boards establish policy for administration of the WIA programs. The policies established by the SAE and the LWDBs support, clarify and implement the WIA and they constitute rules as defined in the State Rules Act and 1.24.10.11 NMAC.

C. When adopting rules, the SAE and the LWDBs shall comply with the State Rules Act and regulations.

D. When publishing information and guidance that do not constitute rules, the SAE and LWDBs may issue program informational notices or technical assistance guides in any format suitable for the distribution of the non-rule information.

E. The SAE will provide timely technical assistance on proposed LWDB rules upon request from the LWDB.

F. The SAE and LWDBs will distribute summary lists of rules and information notices or technical assistance guides periodically.

[11.2.4.8 NMAC - Rp, 11.2.4.8 NMAC, 12/31/05]

11.2.4.9 RESCISSIONS: None.

[11.2.4.9 NMAC - N, 12/31/05]

11.2.4.10 CONTACT ENTITY: Inquiries regarding this issuance should be directed to the state administrative entity (SAE) in Santa Fe (505) 827-6827.

[11.2.4.10 NMAC - Rp, 11.2.4.9 NMAC, 12/31/05]

11.2.4.11 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all WIA SAE subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission on public records.

[11.2.4.11 NMAC - Rp, 11.2.4.10 NMAC, 12/31/05]

History of 11.2. 4 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

11.2.4 NMAC, Workforce Investment Act (WIA) Policy/Program Issuance and State Information Notice (SIN) System, filed 6/16/00 - Repealed 7/01/03

11.2.4 NMAC, Workforce Investment Act (WIA) Program Policies and State Technical Assistance Guide [STAG] System, filed 6/13/03 - Repealed 12/31/05.

NEW MEXICO OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 8 WORKFORCE INVESTMENT ACT (WIA) INDIVIDUAL TRAINING ACCOUNTS (ITAs)

11.2.8.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD).

[11.2.8.1 NMAC - Rp, 11.2.8.1 NMAC 12/31/2005]

11.2.8.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs) and all SAE WIA subrecipients.

[11.2.8.2 NMAC - Rp, 11.2.8.2 NMAC 12/31/2005]

11.2.8.3 STATUTORY AUTHORITY: Workforce Development Act Chapter 50, Article 14, NMSA 1978.

[11.2.8.3 NMAC - Rp, 11.2.8.3 NMAC 12/31/2005]

11.2.8.4 DURATION: Permanent.

[11.2.8.4 NMAC - Rp, 11.2.8.4 NMAC 12/31/2005]

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

[11.2.8.5 NMAC - Rp, 11.2.8.5 NMAC 12/31/2005]

11.2.8.6 OBJECTIVE: To establish policy for local workforce development boards regarding individual training accounts.

[11.2.8.6 NMAC - Rp, 11.2.8.6 NMAC 12/31/2005]

11.2.8.7 DEFINITIONS: [RESERVED]

11.2.8.8 BACKGROUND:

The individual training account (ITA) is established on behalf of a participant to finance training services. Adult and dislocated workers purchase training services from eligible providers selected from the *single* statewide list of approved providers and in consultation with the case manager.

[11.2.8.8 NMAC - N, 12/31/2005]

11.2.8.9 ACTION: References include the following: Public Law 105-220, Workforce Investment Act (WIA), Section 134 (d)(4)(G), 20 CFR Part 652 *et al.*, Section 663.400, Section 663.410, Section 663.420, Section 663.430 and Section 663.440.

A. ITAs:

(1) shall be limited to individuals unable to obtain other grant assistance or require assistance beyond that available from other grant assistance programs; the LWDB or its designee, at each training enrollment period (i.e., semester, quarter), shall document the unavailability of other funding sources such as pell grants, TAA, TANF or other federal grants;

(2) shall only be issued to individuals who have been determined to need training services to obtain employment; ITAs are not considered an *entitlement*; and

(3) shall be developed jointly by the individual and case manager using the results of the assessment and employment development plan and must adhere to any time limitations or dollar amounts established by the LWDB in the local five-year plan; the case manager shall verify that the participant meets the provider's enrollment criteria for admission to the training program or course of study as well as coordinate the provider's acceptance of the participant into the program and coordination of case management.

B. Training programs may only be selected from the approved *single* statewide list and must lead to an "occupation in demand" in the local area or area where the participant is willing to relocate. An "occupation in demand" shall be defined by the LWDB and the method for identifying those occupations shall be documented. No documentation is required if the occupation is listed as an "in demand" occupation

by the economic research and analysis bureau of the New Mexico department of labor.

C. The LWDB or its designee shall establish a mechanism for payment to an approved training provider. This process shall include tracking expenditures of all resources paying for the participant's training, including WIA Title I funds of the ITA.

(1) Participants shall be able to use their ITAs to acquire training from any eligible training provider on the state list or training provider lists of other states where the state of New Mexico has entered into reciprocal agreements.

(2) When an individual is approved for training and an eligible provider is selected, an application for an ITA must be completed by the individual. The application should contain a commitment to complete training, to provide attendance information, grades or progress reports, and credentials, to utilize the provider's resources for placement, and when hired, to provide placement and follow-up information to the case manager. Provisions should also be included for follow-up activities to determine employment retention and wages after employment, to include authorization for access to unemployment insurance (UI) wage records.

(3) Full payment at the beginning of each semester, quarter or other training period will be allowed only if the provider has a published prorated refund policy applicable for all students who may drop out of that training institution. Full payments for entire programs beyond each training period are not allowed.

(4) LWDBs may impose limitations on the dollar amount and/or duration of an ITA.

D. A LWDB may develop reciprocal agreements with other LWDBs, one-stop operators, and service providers, as necessary to effect seamless training services. Such agreements should include arrangements for the provision of case management and any fiscal reimbursement terms and conditions.

E. LWDBs may request the SAE to develop reciprocal agreements with other states in the provision of case management and other training or reporting needs.

F. Use of an ITA is necessary for the following types of training:

(1) occupational skills training services, including training for nontraditional employment;

(2) programs that combine workplace training with related instruction, which includes appropriate education programs;

(3) training programs for occupations in demand operated by the private sec-

tor;

(4) skill upgrading and retraining;

(5) entrepreneurial training;

(6) adult basic education/ESL/literacy provided **in combination with** the above training;

(7) post-secondary education for careers in demand; and

(8) BAT approved apprenticeship programs.

G. An ITA is not used for **short-term prevocational activities**.

Short-term prevocational activities are intensive services that prepare individuals for employment, or enable workers with skills to acquire a necessary occupational credential through short-term continuing education. Examples include development of (1) basic learning, communication and interviewing skills, such as punctuality, personal maintenance and personal conduct skills, (2) employability skills training such as job preparation and work maturity skills developed in SCANS (secretary's committee on achieving necessary skills) and (3) in the development of occupational literacy skills to complete a training program or class, such as a basic computer class in Word.

H. ITAs are not used for OJT, customized training or a training services program of demonstrated effectiveness serving special participant populations that face multiple barriers to employment. These exceptions to the use of ITAs are addressed in other SAE rules.

I. A LWDB or its designee shall monitor the use of ITAs to ensure that training services are provided in a manner that maximizes customer choice, that sound accounting and payment procedures are used and that any local limitations are observed.

J. LWDBs shall make provisions for the maintenance and retention of ITA records, including systems of issuance, funding obligations/expenditures, oversight and completion in accordance with WIA record retention requirements. Such records shall be retained for a period of three program years from the date the individual participant exits unless an unresolved audit is pending. In that case, records must be retained until final resolution of the audit.

K. LWDBs or their designee shall ensure that selected training providers are afforded appropriate training and technical assistance necessary to deliver the required WIA services.

[11.2.8.9 NMAC - Rp, 11.2.8.8 NMAC 12/31/2005]

11.2.8.10 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.8.10 NMAC - Rp, 11.2.8.10 NMAC 12/31/2005]

11.2.8.11 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission on public records.

[11.2.8.11 NMAC - Rp, 11.2.8.11 NMAC 12/31/2005]

HISTORY OF 11.2.8 NMAC:

History of Repealed Material:

11.2.8 NMAC, Workforce Investment Act (WIA) Individual Training Accounts (ITAs), filed 06/16/00 - Repealed 12/31/2005

NEW MEXICO OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 19 WORKFORCE INVESTMENT ACT (WIA) ON-THE- JOB TRAINING

11.2.19.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD).
[11.2.19.1 NMAC - N, 12/31/2005]

11.2.19.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs) and all SAE WIA subrecipients.
[11.2.19.2 NMAC - N, 12/31/2005]

11.2.19.3 STATUTORY AUTHORITY: Workforce Development Act, Chapter 50, Article 14, NMSA 1978.
[11.2.19.3 NMAC - N, 12/31/2005]

11.2.19.4 DURATION: Permanent.
[11.2.19.4 NMAC - N, 12/31/2005]

11.2.19.5 EFFECTIVE DATE: December 31, 2005, unless a later date is cited at the end of the section.
[11.2.19.5 NMAC - N, 12/31/2005]

11.2.19.6 OBJECTIVE: The objective of this rule is to establish requirements for local workforce development boards (LWDBs) in the delivery of on-the-job training services under the Workforce Investment Act (WIA).
[11.2.19.6 NMAC - N, 12/31/2005]

11.2.19.7 DEFINITIONS:
[RESERVED]

11.2.19.8 BACKGROUND:

On-the-job-training (OJT) provides WIA participants the opportunity to receive training while employed and to be paid wages and benefits (i.e., holiday and sick leave) comparable to other employees in similar positions. OJT also provides employers the opportunity to be reimbursed a percentage of the wages paid to WIA participants who are engaged in productive work.

[11.2.19.8 NMAC - N, 12/31/2005]

11.2.19.9 ACTION:

References include the following: Public Law 105-220, Section 101 (31)(A)(B)(C) and Section 122 (h)(1), 20 CFR Part 652, *et al.*, Section 663.430 (a)(1) (permissible training activity), Section 663.595 (performance criteria), Section 663.700 (requirements), Section 663.705 (a)(b)(c) (employed worker), Section 663.710 (a)(b)(c) (OJT payments), Section 663.730 (union organizing), Section 664.460 (d) (older youth), Section 665.200 (b)(2) (eligible provider information), Section 667.268 (a)(2) (business relocation), Section 667.270 (displacement), Section 667.272 (wage and labor standards), Section 667.274 (health & safety), Section 667.275 (nondiscrimination, equal opportunity and nonsectarian activities), and Section 667.640 (b)(iii) (denial of training provider).

A. OJT services shall be provided by an employer in the public, private non-profit or private for-profit sector with payment for WIA participant(s) engaged in productive work that: (a) provides knowledge or skills essential to full and adequate performance of the job; (b) provides reimbursement to the employer of up to 50% of the participant's wage rate (excluding benefits) for the extraordinary costs of providing training; (c) is limited in duration as appropriate to the occupation and considering the individual's prior work experience and employability development plan; and (d) prepares the participant for long-term, unsubsidized employment.

B. WIA mandates that training services for OJT and customized training be provided through the use of a contract.

(1) Each OJT contract shall be designed for a particular participant and employer. Procurement of OJT contracts is conducted through non-competitive negotiations. Documentation detailing how the price was derived must be developed and maintained.

(2) Contracts shall not be written for seasonal, intermittent or other types of temporary employment and must not involve payment in the form of a commission, tip, or similar kinds of payments.

Generally, contracts should be written for full-time employment; the standard for what constitutes "full-time" employment may vary depending on the occupation, industry or needs of the participant.

(3) OJT contracts must be geared to occupations in demand in the local area or area where the participant is willing to relocate. An "occupation in demand" will be defined by the LWDB and the method for identifying those occupations shall be documented. No documentation is required if the occupation is listed as an "in demand" occupation by the economic research and analysis bureau of the New Mexico department of labor, or its successor agency.

(4) The local workforce development board shall make efforts to assure that the occupations and positions are those which afford adults and dislocated workers the opportunity to become self-sufficient as defined in the local five-year plan.

(5) The employment of an OJT participant with the participant's previous employer in the same or similar job is prohibited.

(6) Compensation shall not be made for no more than the total number of work hours worked for any given month. In establishing the rate of reimbursement to employers, reimbursement may be authorized for wages paid for benefits (i.e., holidays and sick leave) provided to Title I participants.

(7) OJT contracts may, per local board policy, be developed with employer leasing agencies that provide regular, permanent employment (i.e.: not probationary, temporary or intermittent employment) in a demand occupation and, place employees at worksites with other employers. WIA funds may not be used for payment or reimbursement of any fees charged by an employer leasing agency.

C. The LWDB shall ensure that OJT contracts are not written with employers who have had two or more previous OJT or customized training contracts and exhibited a pattern of failing to provide participants with continued, long-term (9 months or longer) employment as regular employees with wages and working conditions the same as similarity situated employees. The LWDB shall determine what constitutes a pattern of failure and shall develop a written policy on employer sanctions to include time limits and appeal procedures. In determining sanctions, the LWDB shall consider whether the OJT participant quit voluntarily, was fired for cause or if business conditions changed the employment opportunities with the employer.

D. OJT contracts may also be written for eligible *employed workers*. An eligible *employed worker* is an individual who is job attached but in need of skills

upgrade and not earning a self-sufficient wage as determined by the LWDB. Contracts must relate to the introduction of new technologies, introduction to new production or service procedure, upgrading to new jobs that require additional skills, workplace literacy, or other purposes as identified by the LWDB.

E. The LWDB shall ensure that both types of OJT contracts include, at a minimum, the following contract elements:

(1) job description (use O Net [<http://online.onetcenter.org>]) training outline or curriculum, including provision for any required classroom/adult basic education/or vocational training as established by the needs assessment;

(2) participant hourly wage rate and allowable training hours (work zones as noted on O Net);

(3) provision for wage increases based upon successful achievement of training goals as provided to other similar employees, if applicable;

(4) provision for assurances not to reduce wage rates after completion of training contract;

(5) agreement on the maximum amount of reimbursement and/or allowable costs of training;

(6) provisions for participant time off, if necessary; to attend WIA sponsored meetings, workshops, classes or other events;

(7) duration of contract;

(8) a provision for recoupment of overpayments;

(9) a provision for termination due to lack of funds or lack of participant attendance or unsatisfactory progress;

(10) a provision for termination due to failure of the employer to comply with initial or upgraded employment requirement (OJT for *employed workers only*);

(11) a provision for allowing for LWDBs or their designee, state and federal staff monitoring and review of training records;

(12) a provision for meeting record retention requirements;

(13) identification and reporting of new employees versus employed workers (OJT for *employed workers only*);

(14) employer requirement to maintain attendance and payroll records to support requests for reimbursement;

(15) provision for the submittal of participant reimbursement/progress evaluations on a timely basis;

(16) state taxpayer identification numbers for payment of state gross receipts tax and unemployment compensation tax;

(17) worker's compensation coverage, if applicable;

(18) a provision for equal

employment opportunity;

(19) a provision for drug-free workplace;

(20) a provision for debarment and suspension, where applicable;

(21) a requirement that the providers report program outcomes;

(22) a requirement for job retention beyond the training period; and

(23) other provisions as required by local policies and procedures.

F. In determining an employer's viability for an OJT contract, the LWDB shall consider the employer's past history with OJT and customized training contracts. LWDBs shall ensure compliance with 20 CFR at Sections: 663.730, 663.270, 667.268, 667.272, 667.274 and 667.275. The LWDB may also consider the employer's finances, lay-offs, relocation, labor disputes, as well as the occupational and industry outlook.

G. OJT for youth is to provide older youth with opportunities for career exploration and skill development. It should enable a youth to acquire the personal attributes, knowledge and skills needed to obtain a job and advance in employment.

(1) Generally, OJT is not considered an appropriate activity for youth under 18 years of age. The objective assessment and individual service strategy must support OJT for youth.

(2) Where OJT contracts must be developed for youth, contracts must include child labor law compliance.

(3) OJT for youth may include one or more of the following:

(a) instruction in employability skills or generic workplace skills such as those identified by the secretary's commission on achieving necessary skills (SCANS);

(b) internships and job shadowing;

(c) progressively more complex tasks; and

(d) other elements as identified by the LWDB in the local five-year plan.

(4) Like adult OJT contracts, the LWDB shall not contract with an employer who has previously exhibited a pattern of failing to provide OJT participants with continued, long-term (6 or more months) employment with wages, benefits and working conditions equal to those of regular employees doing the same work and who have worked a similar length of time.

H. LWDBs shall make provisions for the maintenance and retention of all on-the-job training records, including systems of issuance, funding obligations/expenditures, oversight and completion in accordance with WIA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the individual partici-

pant exits unless an unresolved audit is pending. In that case, records must be retained until final resolution of the audit.

I. LWDBs shall establish and collect relevant performance criteria/program outcomes for each of their contract providers.

J. LWDBs shall ensure that, at a minimum, one core and one intensive service are provided to each WIA participant prior to their participation in any training activity and is documented in the participant folder.

K. LWDBs or their designee shall ensure that selected training providers are afforded appropriate training and technical assistance necessary to deliver the required WIA services.

L. LWDBs or their designee shall review each OJT contract on-site to determine that payroll and time and attendance records substantiate amounts claimed for reimbursement and that training, wages, hours, benefits and working conditions are provided in accordance with the contract.

[11.2.19.9 NMAC - N, 12/31/2005]

11.2.19.10 CONTACT AGENCY:

Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.19.10 NMAC - N, 12/31/2005]

11.2.19.11 DISTRIBUTION:

SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative, and New Mexico commission of public records.

[11.2.19.11 NMAC - N, 12/31/2005]

HISTORY OF 11.2.19 NMAC: [RESERVED]

**NEW MEXICO
OFFICE OF WORKFORCE
TRAINING AND
DEVELOPMENT**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 20 WORKFORCE
INVESTMENT ACT (WIA) CUS-
TOMIZED TRAINING**

11.2.20.1 ISSUING AGENCY:

New Mexico Office of Workforce Training and Development (OWTD).

[11.2.20.1 NMAC - N, 12/31/2005]

11.2.20.2 SCOPE:

The Workforce Investment Act (WIA) state

administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs) and all SAE WIA subrecipients.

[11.2.20.2 NMAC - N, 12/31/2005]

11.2.20.3 STATUTORY AUTHORITY:

Workforce Development Act Chapter 50, Article 14, NMSA 1978.

[11.2.20.3 NMAC - N, 12/31/2005]

11.2.20.4 DURATION:

Permanent.

[11.2.20.4 NMAC - N, 12/31/2005]

11.2.20.5 EFFECTIVE DATE:

December 31, 2005 unless a later date is cited at the end of a section.

[11.2.20.5 NMAC - N, 12/31/2005]

11.2.20.6 OBJECTIVE:

To establish requirements for local workforce investment boards (LWDBs) in the delivery of customized training services under the Workforce Investment Act (WIA)

[11.2.20.6 NMAC - N, 12/31/2005]

11.2.20.7 DEFINITIONS:

[RESERVED]

11.2.20.8 BACKGROUND:

Customized training is occupational training designed to meet the specific training needs of an employer or group of employers through a training curriculum that is "customized" to a WIA participant's skill needs. Under the terms of the customized training contract, the employer agrees to employ a participant upon completion of training and agrees to pay a minimum of 50% of the cost of the participant's training.

[11.2.20.8 NMAC - N, 12/31/2005]

11.2.20.9 ACTION:

References include the following: Public Law 105-220, Workforce Investment Act (WIA), Section 101(8)(A)(B)(C), Section 122 (h)(1)(2), 20 CFR Part 652*et al.*, Section 663.430 (a)(i), Section 663.595, Section 663.715 (a)(b)(c), Section 663.720 (a)(b)(c), Section 663.730, Section 665.200 (b)(2), Section 667.268 (a)(2), Section 667.270, Section 667.272, Section 667.640 (b)(iii), Section 667.274 and Section 667.275.

A. LWDBs shall establish customized training programs that must comply with the following requirements:

(1) the employer makes a written commitment to employ the WIA participant upon successful completion of training; and

(2) the employer pays a *minimum* of 50% of the cost of the participant's training.

B. Customized training for **incumbent workers** must comply with the following requirements:

(1) the above requirements in

Subsection A are met;

(2) the incumbent worker is not earning a self-sufficient wage as determined by the local workforce development board (LWDB); and

(3) the customized training relates to introduction of new technology, introduction of new production or service procedures, or upgrading to new jobs that require additional skills, workplace literacy or other appropriate purposes identified by the LWDB.

C. Customized training contracts are designed for a particular participant, employer or group of employers, and a training provider. Procurement of customized training contracts is conducted through noncompetitive negotiations. Documentation detailing how the price was derived must be developed and maintained.

(1) The assessment of the participant needs of the employer and skills to be learned shall be considered in developing the contract. The goal is to prepare the participant for long-term, unsubsidized employment based on the new or upgraded skills acquired through training.

(2) Customized training contracts shall not be written to provide skills for seasonal, temporary or intermittent employment.

(3) The LWDB shall make an effort to ensure that occupations obtained through customized training afford the participant the opportunity to become self-sufficient as defined in the local five-year plan.

D. LWDBs shall ensure that their written customized training include, at a minimum, the following:

(1) agreement on the maximum allowable costs of training;

(2) employer commitment to fund a *minimum* of 50% of training costs (not to include employee wages);

(3) the length of training required;

(4) description of occupations involved, skill(s) and competencies to be provided and learned;

(5) performance measures outcome requirements, including for incumbent workers;

(6) define what constitutes successful completion of training;

(7) a provision for recoupment of overpayments;

(8) a provision for termination for lack of funds, lack of participant attendance or failure of employer to comply with initial or upgraded employment requirements;

(9) a provision for LWDB, state and federal monitoring and review of training records;

(10) state taxpayer identification numbers for payment of state gross receipts tax and state unemployment compensation tax;

(11) other provisions required by

LWDB policy.

E. In determining an employer's viability for customized training contracts, the LWDB may consider the employer's past history with OJT contracts, finances, layoffs, relocation, and labor disputes, as well as the occupational and industry outlook. Contracts shall not be written with employers who failed to provide agreed upon employment to participants who completed training. LWDBs shall ensure compliance with the requirements in 20 CFR 663.730, 20 CFR 667.270 and 20 CFR 667.268.

F. LWDBs shall monitor each customized training contract through attendance and completion records to determine amounts claimed are substantiated and that training is being provided in accordance with the contract. Monitoring shall also include reviewing participant progress and a determination if supportive services are needed. LWDBs shall also monitor the work site upon placement of the participant after completion of training to document whether the participant is working in the agreed position, at the agreed salary, and utilizing the skills obtained through the customized training.

G. LWDBs shall make provisions for the maintenance and retention of all customized training records, including systems of issuance, funding obligations/expenditures, oversight and completion in accordance with WIA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the individual participant exits unless an unresolved audit is pending. In that case, records must be retained until final resolution of the audit.

[11.2.20.9 NMAC - N, 12/31/2005]

11.2.20.10 RESCISSIONS:

None. However, this rule supersedes State Information Notice (SIN) No. 44-00, "SAE guidance regarding OJT and customized training activities," dated September 8, 2000.

[11.2.20.10 NMAC - N, 12/31/2005]

11.2.20.11 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.20.11 NMAC - N, 12/31/2005]

11.2.20.12 DISTRIBUTION:

SWDB and LWDB chairpersons, LWDB administrative entities, SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission on public records.

[11.2.20.12 NMAC - N, 12/31/2005]

HISTORY OF 11.2.20 NMAC:
[RESERVED]

**NEW MEXICO
OFFICE OF WORKFORCE
TRAINING AND
DEVELOPMENT**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 21 WIA TECHNICAL
ASSISTANCE AND CORRECTIVE
ACTION - LOCAL WORKFORCE
DEVELOPMENT BOARD FAILURE
TO MEET PERFORMANCE**

11.2.21.1 ISSUING AGENCY:

The New Mexico Office of Workforce Training and Development (OWTD).

[11.2.21.1 NMAC - N, 12/31/05]

11.2.21.2 SCOPE:

The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs), and all SAE WIA subrecipients.

[11.2.21.2 NMAC - N, 12/31/05]

11.2.21.3 STATUTORY

AUTHORITY: Workforce Development Act, Chapter 50, Article 14, NMSA 1978

[11.2.21.3 NMAC - N, 12/31/05]

11.2.21.4 DURATION:

Permanent.

[11.2.21.4 NMAC - N, 12/31/05]

11.2.21.5 EFFECTIVE DATE:

December 31, 2005 unless a later date is cited at the end of a section.

[11.2.21.5 NMAC - N, 12/31/05]

11.2.21.6 OBJECTIVE:

To establish policy for local workforce development boards (LWDBs) regarding technical assistance and corrective action to be taken when LWDBs fail to meet performance.

[11.2.21.6 NMAC - N, 12/31/05]

11.2.21.7 DEFINITIONS:

[RESERVED]

11.2.21.8 BACKGROUND:

The corrective action and technical assistance plan required by this rule gives LWDBs the opportunity to identify and request technical assistance as needed to effectively improve performance. This requirement will take effect beginning with the LWDBs *annual* performance outcomes for program year 2214.

[11.2.21.8 NMAC - N, 12/31/05]

11.2.21.9 ACTION:

References include the following: Pub.L. 105-220,

Workforce Investment Act (WIA), Section 136 (h)(1)(2), Section 666-420 (sanctions for poor performance), 20 CFR Part 652 et al., Training and Employment Guidance Letter (TEGL) No. 8-99, and Training and Employment Guidance Letter (TEGL) No. 19-02.

A. Within *thirty (30) days* following the LWDBs receipt of its annual performance outcomes for the year in which one or more negotiated levels of performance were not met, a LWDB shall submit to the SAE a corrective action plan that addresses each core performance measure for which the LWDBs annual performance level falls below 80% of the level negotiated with SAE. The PY 04 core performance measures are as follows:

- (1) Adults
 - (a) entered employment rate
 - (b) employment retention rate
 - (c) earnings change in six months
 - (d) employment and credential rate
- (2) Dislocated workers
 - (a) entered employment rate
 - (b) employment retention rate
 - (c) earnings replacement rate
 - (d) credential rate
- (3) Older youth (aged 19-21)
 - (a) entered employment rate
 - (b) employment retention rate
 - (c) earnings change in six months
 - (d) credential rate
- (4) Younger youth (aged 14-18)
 - (a) skill attainment rate
 - (b) diploma or equivalent attainment rate
 - (c) retention rate
- (5) Customer satisfaction
 - (a) employer satisfaction
 - (b) customer satisfaction

(6) Under re-authorization of WIA, the core measures of performance may change. Unless LWDBs are notified, the corrective action policy in this rule shall apply to any new or modified core measure.

B. For purposes of this rule, the following definitions apply for each category/measure.

- (1) "Exceeds performance" is a local performance result that is 100% or higher of a negotiated performance level.
- (2) "Meets performance" is a local performance result between 80% and 99% of a negotiated performance level.
- (3) "Fails performance" is a local performance result that is less than 80% of a negotiated performance level.

C. If a LWDB fails to meet one or more negotiated performance levels in a single program year beginning with program year 2004 (July 1, 2004 through June 30, 2004) based on annual performance outcomes, the LWDB is precluded from receiving incentive funds for each category in which performance outcomes were

not met. The LWDB must develop a corrective action and technical assistance plan as provided below.

D. If a LWDB fails to meet one or more negotiated performance levels for the same performance measure(s) for a second consecutive program year beginning with PY 2004 annual performance outcomes, the LWDB is precluded from receiving incentive funds for each category for the two program years in which the performance outcomes were not met. The LWDB must also submit a corrective action and technical assistance plan as provided below.

E. Further, a monetary reduction (deobligation) of WIA Title IB formula funds shall be imposed on the funding allocation for the program year immediately succeeding the two program years of failed performance. The amount of the reduction will be determined by the SAE and will be based on the number of measures failed for two consecutive years. This funding reduction will be held by the SAE and used to provide technical assistance to the LWDB as identified in the LWDBs corrective action and technical assistance plan.

F. Continued failure to meet negotiated levels of performance beyond two years will require the governor to take additional corrective action. This may include a reorganization plan under which the governor requires appointment of a new LWDB, prohibits use of particular service providers or one-stop partners, or other appropriate measures designed to improve performance.

G. The LWDBs corrective action and technical assistance plan for year number one addressing performance failure(s) shall include, at a minimum, the following:

- (1) a list of the performance measure(s) for which the LWDB failed to achieve at least 80% and the actual percentage achieved for each;
- (2) for each of the failed measures, a detailed explanation and analysis of why the LWDB failed to achieve the minimum 80%;
- (3) a description of the corrective actions to be taken and the timeline for such actions to ensure that the minimum 80% performance will be achieved in subsequent program years;
- (4) identification of technical assistance needed to ensure successful performance, to include the source and type of assistance;
- (5) a monitoring plan with timelines for monitoring performance of the plan.

H. A LWDB corrective action and technical assistance plan for year number two addressing performance failure(s) shall include all of the above and an

analysis of why the corrective action and technical assistance plan for year number one was unsuccessful.

I. The corrective and technical assistance plan submitted by the LWDB may be modified by the SAE as deemed necessary. The SAE will assist the LWDB with identification of technical assistance resources upon request.

J. LWDBs may apply to the SAE for technical assistance funds for failure to meet performance measures. Such funds shall *not* be provided for the following: administrative costs, staff salaries or benefits, out-of-state travel, meals or refreshments, capital equipment purchases, including computers or other equipment. A LWDB may not receive more funding for technical assistance than it would have been eligible for through performance incentive awards for the program year.

K. A list of items to consider in developing a corrective action and technical plan follows:

- (1) improving assessment methodology to ensure appropriate referrals to intensive and training services;
- (2) in-service training by a combination of cross training by strong performers and site visits elsewhere in the LWDB or other LWDBs in the state;
- (3) training on adult, dislocated worker and youth performance management;
- (4) training on WIA case management;
- (5) improving monitoring of service providers;
- (6) training on use of the virtual one-stop system (VOSS);
- (7) improving participant follow-up services;
- (8) improving linkages with business community and publication about services available in the one-stop career centers;
- (9) restructuring of staff;
- (10) training of management staff.

[11.2.21.9 NMAC - N, 12/31/05]

11.2.21.10 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.21.10 NMAC - N, 12/31/05]

11.2.21.11 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records.

[11.2.21.11 NMAC - N, 12/31/05]

HISTORY OF 11.2.21 NMAC: [RESERVED]

**NEW MEXICO
OFFICE OF WORKFORCE
TRAINING AND
DEVELOPMENT**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 22 WORKFORCE
INVESTMENT ACT (WIA) PRO-
GRAMS OF DEMONSTRATED
EFFECTIVENESS**

11.2.22.1 ISSUING AGENCY:
The New Mexico Office of Workforce
Training and Development (OWTD).

[11.2.22.1 NMAC - N, 12/31/05]

11.2.22.2 SCOPE: The
Workforce Investment Act (WIA) state
administrative entity (SAE), state work-
force development board (SWDB), local
workforce development boards (LWDBs),
and all SAE WIA subrecipients.

[11.2.22.2 NMAC - N, 12/31/05]

**11.2.22.3 STATUTORY
AUTHORITY:** Workforce Development
Act, Chapter 50, Article 14, NMSA 1978

[11.2.22.3 NMAC - N, 12/31/05]

11.2.22.4 DURATION:
Permanent.

[11.2.22.4 NMAC - N, 12/31/05]

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

[11.2.22.5 NMAC - N, 12/31/05]

11.2.22.6 OBJECTIVE:
Occupational training for "low income indi-
viduals" that face multiple barriers to
employment may be provided through a
contract directly with a community-based
organization or other private organization,
which has an established program of
demonstrated effectiveness in serving these
special participant populations. These
occupational training contracts may be used
in lieu of an individual training account.

[11.2.22.6 NMAC - N, 12/31/05]

11.2.22.7 DEFINITIONS:
[RESERVED]

11.2.22.8 ACTION: References
include the following: Public Law 105-220,
Workforce Investment Act (WIA), Section
101 (25), Section 134 (d) (4) (G), and 20
CFR Part 652, et al., Section 663.430.

A. When a local workforce
development board (LWDB) determines
there is a training services program of
demonstrated effectiveness offered in the

area by a community-based organization or
other organization that serves special partic-
ipant populations who face multiple barriers
to employment, the LWDB may contract for
occupational training services. Procurement
of the contract is conducted through non-
competitive negotiations. Documentation
detailing how the price was derived must
be developed and maintained.

B. Criteria to be used by
the LWDB to determine demonstrated
effectiveness may include the following:

(1) financial stability of the
organization;

(2) demonstrated performance in
delivery of services to hard-to-serve popu-
lations such as: a) program completion
rates; b) attainment of skills; c) certificates
or degrees; d) placement in unsubsidized
employment; and

(3) how the program relates to
workforce needs identified in the local five-
year plan.

C. LWDBs shall ensure
that programs:

(1) are comprehensive in nature;

(2) are geared to occupations in
demand in the local area or area where the
participant is willing to relocate;

(3) evaluate the participant's spe-
cific barriers to employment;

(4) access client skill levels and
develop appropriate employability develop-
ment plans;

(5) result in employment;

(6) provide assistance at the end
of training; and

(7) provide a credential upon suc-
cessful completion of the program; creden-
tials must meet the employability develop-
ment plan requirements such as: a certifi-
cate, certification of completion, diploma,
license, or degree.

D. LWDBs shall ensure
that their training contracts for programs of
demonstrated effectiveness include, at a
minimum, the following contract elements:

(1) job description (use of O Net
[<http://online.onetcenter.org>]), training out-
line or curriculum, including provision for
any required classroom/adult basic educa-
tion/or vocational training as established by
the needs assessment;

(2) participant hourly wage rate
and allowable training hours (work zones as
noted on O Net);

(3) provision for wage increases
based upon successful achievement of train-
ing goals as provided to other similar
employees, if applicable;

(4) provision for assurances not to
reduce wage rates after completion of train-
ing contract;

(5) agreement on the maximum
amount of reimbursement and/or allowable
costs of training;

(6) provisions for participant time

off, if necessary, to attend WIA sponsored
meetings, workshops, classes or other
events;

(7) duration of contract;

(8) a provision for recoupment of
overpayments;

(9) a provision for termination
due to lack of funds or lack of participant
attendance or unsatisfactory progress;

(10) a provision allowing for
LWDBs or their designee, state and federal
staff monitoring and review of training
records;

(11) a provision for meeting
record retention requirement;

(12) employer requirement to
maintain attendance and payroll records to
support requests for reimbursement;

(13) provision for the submittal of
participant reimbursement/progress evalua-
tions on a timely basis;

(14) state taxpayer identification
numbers for payment of state gross receipts
tax and unemployment compensation tax;

(15) workers' compensation cov-
erage, if applicable;

(16) a provision for equal
employment opportunity;

(17) a provision for a drug-free
workplace;

(18) a provision for debarment
and suspension, where applicable; and

(19) other provisions as required
by local policies and procedures.

E. An "occupation in
demand" will be defined by the LWDB and
the method for identifying those occupa-
tions shall be documented. No documenta-
tion is required if the occupation is listed as
an "in demand" occupation by the econom-
ic research and analysis bureau of the New
Mexico department of labor, or its successor
agency.

F. LWDBs shall make
provisions for the maintenance and reten-
tion of records of programs of demonstrated
effectiveness, including systems of
issuance, funding obligations/expenditures,
oversight and completion in accordance
with WIA record retention requirements.
Such records shall be retained for a period
of three (3) program years from the date the
individual participant exits, unless an unre-
solved audit is pending. In that case,
records must be retained until final resolu-
tion of the audit.

G. LWDBs shall ensure
that, at a minimum, one core and one inten-
sive service are provided to each WIA par-
ticipant prior to their participation in any
training activity. Documentation to support
the provision of the core and intensive serv-
ices must be maintained in the participant
folder.

H. LWDBs shall establish
and collect relevant performance
criteria/programs outcomes for each con-

tract provider.

I. A "low income individual" is defined in WIA, Section 101(25). The special participant population eligible for a training services program of demonstrated effectiveness is identified in 20 CFR 663.430(b). The governor has determined that no additional groups, other than those defined by the regulation, will be identified as hard-to-serve for purposes of granting exceptions to individual training accounts.

J. LWDBs or their designee shall monitor each training contract through attendance and completion records to determine that the amounts claimed for reimbursement are substantiated and that training is being provided in accordance with the contract. Monitoring includes reviewing participant progress to ascertain that the participant is gaining the necessary skills and to determine if supportive services are needed. Upon placement, the LWDB shall also monitor at the work site to determine whether the participant is employed in the occupation for which training was provided, and is earning a self-sufficient wage as defined by the LWDB. Annual monitoring of the provider shall include administrative and fiscal records.

K. LWDBs or their designee shall ensure that selected service providers are afforded appropriate training and technical assistance necessary to deliver the required WIA services.
[11.2.22.8 NMAC - N, 12/31/05]

11.2.22.9 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.
[11.2.22.9 NMAC - N, 12/31/05]

11.2.22.10 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records.
[11.2.22.10 NMAC - N, 12/31/05]

HISTORY OF 11.2.22 NMAC:
[RESERVED]

**NEW MEXICO
OFFICE OF WORKFORCE
TRAINING AND
DEVELOPMENT**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 23 WORKFORCE
INVESTMENT ACT (WIA) PRIORITY
OF SERVICE**

11.2.23.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD)
[11.2.23.1 NMAC - N, 12/31/05]

11.2.23.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs), and all SAE WIA subrecipients.
[11.2.23.2 NMAC - N, 12/31/05]

11.2.23.3 STATUTORY AUTHORITY: Workforce Development Act, Chapter 50, Article 14, NMSA 1978.
[11.2.23.3 NMAC - N, 12/31/05]

11.2.23.4 DURATION: Permanent
[11.2.23.4 NMAC - N, 12/31/05]

11.2.23.5 EFFECTIVE DATE: December 31, 2005, unless a later date is cited at the end of a section.
[11.2.23.5 NMAC - N, 12/31/05]

11.2.23.6 OBJECTIVE: To establish policy for local workforce development boards regarding priority of services for adults and the veterans' priority mandate.
[11.2.23.6 NMAC - N, 12/31/05]

11.2.23.7 DEFINITIONS:
[RESERVED]

11.2.23.8 BACKGROUND:
A. If adult funds allocated to a local workforce development board are "limited", then priority for intensive and training services must be given to recipients of public assistance and other low-income individuals. This requirement ensures that low-income individuals and public assistance recipients receive services beyond core. It also assures that WIA funds are used for low-income individuals who do not qualify for other programs.

B. On September 16, 2003, the U.S. department of labor (USDOL) issued instructions on implementation of the Jobs for Veterans Act. This guidance transmitted in TEGL 5-03 requires priority of services to veterans (and some spouses) for all USDOL training programs. Pending development of specific federal guidance for WIA programs, the USDOL has encouraged states to provide interim guidance for WIA Title I programs. TEGL 5-03 can be accessed at <http://www.doleta.gov>, or on the state wia website at www.wia.state.nm.us.

C. USDOL states that the Jobs for Veterans Act is applicable to operations under current law when a program

has its own statutory priorities for certain population groups. WIA Title I has such priorities at section 134(d)(4)(E).
[11.2.23.8 NMAC - N, 12/31/05]

11.2.23.9 ACTION: References include the following: Title I of the Workforce Investment Act, Public Law 105-220, Workforce Investment Act, section 101(25) (low income), Section 101(37)(public assistance), Section 134(d)(4)(E) (priority), Pub. L. 107-288, Jobs for Veterans Act, 20 CFR 652 *et al.* Section 663-600 (low income/ public assistance), and USDOL Training and Employment Guidance Letter (TEGL) No. 5-03.

A. LWDBs shall develop a methodology for determining when funding will be considered "limited", for Title I adult intensive and training services. The methodology should have a direct relationship to the individuals awaiting entry into intensive and training services. The system of service priority should include consideration of the adequacy of other available funding sources for adult employment and training-related services such as TANF or Welfare-to-Work. If the LWDB demonstrates that funds are available to meet the needs of all eligible adults for appropriate intensive or training services, the priority requirement for low-income individuals will not apply. Veterans, however, will receive priority over non-veterans.

B. When a LWDB makes a determination that a priority of service system is necessary because funding is limited (i.e., adults awaiting entry into intensive or training services), the local board shall notify the state administrative entity (SAE) in writing. The LWDB shall also notify the SAE in writing when reverting back to a non-priority process.

C. Upon a determination that local adult funds are limited and a priority of services system for the provision of intensive or training services (including individual training accounts) to program eligible adults is necessary, a veterans priority as well as priority to public assistance recipients and low income individuals required in WIA regulations will be established as follows:

(1) First priority will be provided to recipients of public assistance and other low-income individuals *who are also* veterans or spouses of veterans that fall into the following categories:

(a) any veteran who dies of a service connected disability;

(b) any member of the armed services serving on active duty who, at the time of application, is listed in one or more of the categories below for a total of more than 90 days as:

(i) missing in action;
 (ii) captured in the line of duty by a hostile force; or
 (iii) forcibly detained or interned in the line of duty by a foreign government or power;

(c) any veteran who has a total disability resulting from a service-connected disability;

(d) any veteran who dies while a disability so evaluated was in existence.

(2) recipients of public assistance and other low-income individuals;

(3) veterans, or spouses of veterans as defined above; and

(4) any additional targeted groups for priority of service identified by the LWDB.

D. When a LWDB provides intensive and training services without the limited funds provision for priority of services, veterans receive priority over non-veterans.

E. LWDBs should review local policies related to priority of services priorities and revise them as necessary to comply with this rule and the Jobs for Veterans Act.

F. LWDBs are encouraged to provide information to their subrecipients concerning the Jobs for Veterans Act. No modifications are required for existing contracts but all subsequent contracts and grants where appropriate for service delivery shall include the veterans' priority mandate.

G. The LWDBs, or their designee, shall monitor delivery of intensive and training services for adults to ensure that no individuals receiving public assistance or other low-income individuals are excluded from participation or denied benefits under WIA and that the veterans priority mandate is established.
 [11.2.23.9 NMAC - N, 12/31/05]

11.2.23.10 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.
 [11.2.23.10 NMAC - N, 12/31/05]

11.2.23.11 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records.
 [11.2.23.11 NMAC - N, 12/31/05]

HISTORY OF 11.2.23 NMAC:
 [RESERVED]

NEW MEXICO OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 2 JOB TRAINING PART 26 WIA PROGRAM COMPLAINT RESOLUTION PROCEDURES AND PROCEDURES FOR REPORTING CRIMINAL FRAUD AND ABUSE

11.2.26.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD).
 [11.2.26.1 NMAC - N, 12/31/05]

11.2.26.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB) local workforce development boards (LWDBs), and all SAE WIA subrecipients.
 [11.2.26.2 NMAC - N, 12/31/05]

11.2.26.3 STATUTORY AUTHORITY: Workforce Development Act, Chapter 50, Article 14, NMSA 1978.
 [11.2.26.3 NMAC - N, 12/31/05]

11.2.26.4 DURATION: Permanent.
 [11.2.26.4 NMAC - N, 12/31/05]

11.2.26.5 EFFECTIVE DATE: December 31, 2005 unless a later date is cited at the end of a section.
 [11.2.26.5 NMAC - N, 12/31/05]

11.2.26.6 OBJECTIVE: This rule sets forth the complaint resolution procedures for program complaints involving proper application of the Workforce Investment Act and its regulations and policies by the LWDBs and program complaints involving statewide WIA policies and rules.
 [11.2.26.6 NMAC - N, 12/31/05]

11.2.26.7 DEFINITIONS:
 [RESERVED]

11.2.26.8 ACTION: References include the following: Public Law 105-220, Workforce Investment Act, Section 667.630 (criminal complaints and reports), and 20 CFR Part 667, Subpart F.

A. PROGRAM COMPLAINTS AGAINST LOCAL WIA PROGRAMS

(1) Who may file: Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of

local WIA programs, agreements or the local workforce development board's policies and activities.

(2) Time and place for filing: Local program complaints must be filed with the service provider or local administrative entity within 1 year from the date of the event or condition that is alleged to be a violation of WIA.

(3) Procedure to be followed:

(a) Step 1 - Initial review.

(i) Written complaints will be taken by the service provider or local administrative entity from the complainant or the complainant's designated representative. All complaints will be logged.

(ii) If the complaint alleges a violation of any statute, regulation, policy, or program that is not governed by WIA, the complaint will be referred to the appropriate organization for resolution. Notice of the referral will be sent to the complainant.

(iii) If the complaint is retained, a complaint file should be established that contains: 1) all application and enrollment forms, if appropriate, 2) the complaint statement and form, 3) chronological log of events, 4) relevant correspondence, and 5) a record of the resolution attempted.

(b) Step 2 - Informal resolution.

An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file.

(c) Step 3 - Formal resolution.

(i) When no informal resolution is possible, the service provider will forward the complaint and a copy of the file to the local administrative entity that will review the complaint file, conduct a further investigation if necessary, and issue a determination within 20 calendar days from the date the complaint was filed. If further review of the determination is not requested, the complaint is considered resolved and the complaint file should be documented accordingly.

(ii) Any party dissatisfied with the determination may request a hearing within 10 calendar days of the date of the determination. The local administrative entity will schedule the hearing and forward the program complaint to the impartial hearing officer for resolution. The local administrative entity will monitor the processing of the complaint.

(d) Step 4 - Hearing. The hearing officer will schedule a formal hearing by written notice, mailed to all interested par-

ties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing must be conducted within 45 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

(e) **Step 5 - Final decision.** The local administrative entity will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

(f) **Step 6 - Appeal.**

(i) Any party dissatisfied with the final decision, or any party who has not received a decision or a final resolution within 60 calendar days from the date the complaint was filed, may file a request for review. A request for review must be filed with the state administrative entity (office of workforce training and development) within 90 calendar days from the date the complaint was originally filed.

(ii) The state administrative entity will review the record and issue a final decision on appeal within 30 calendar days from the date the appeal was received by the state administrative entity.

B. PROGRAM COMPLAINTS AGAINST STATEWIDE WIA PROGRAMS AND POLICIES

(1) **Who may file:** Applicants, participants, service providers, recipients and other interested parties, may file a complaint alleging a non-criminal violation of statewide WIA policies, activities or agreements.

(2) **Time and place for filing:** Statewide program complaints must be filed with the statewide service provider or state administrative entity within 1 year from the date of the event or condition that is alleged to be a violation of WIA.

(3) **Procedure to be followed:**

(a) **Step 1 - Initial review.**

(i) Written complaints will be taken from the complainant or the complainant's designated representative. All complaints will be logged.

(ii) If the complaint alleges a violation of local WIA programs, policies or agreements, the complaint will be referred to the local administrative entity for processing under the complaint procedures for program complaints against local

WIA programs. If the complaint alleges a violation of any statute, regulation, policy, or program that is not part of WIA, the complaint will be referred to the appropriate organization. Notice of the referral will be sent to the complainant.

(iii) If the complaint is retained, a complaint file should be established that contains: 1) the complaint statement and form, 2) chronological log of events, 3) relevant correspondence, and 4) a record of the resolution attempted.

(b) **Step 2 - Informal resolution.** An attempt should be made to informally resolve the complaint to the satisfaction of all parties. This informal resolution process must be completed within 10 calendar days from the date the complaint was filed. If all parties are satisfied, the complaint is considered resolved and the terms and conditions of the resolution must be documented in the complaint file.

(c) **Step 3 - Formal resolution.**

(i) When no informal resolution is possible, the statewide service provider will forward the complaint together with a copy of the complaint file to the state administrative entity who will review the complaint file, conduct a further investigation if necessary, and issue a determination within 20 calendar days from the date the complaint was filed. If further review of the determination is not requested, the complaint is considered resolved and the complaint file should be documented accordingly.

(ii) Any party dissatisfied with the determination may request a hearing within 10 calendar days of the date of the determination. The state administrative entity will schedule the hearing and forward the program complaint to the impartial hearing officer for resolution. The state administrative entity will monitor the processing of the complaint.

(d) **Step 4 - Hearing.** The hearing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing must be conducted within 45 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or another designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based.

(e) **Step 5 - Final decision.** The

state administrative entity will review the recommendation of the hearing officer and will issue a final decision within 60 calendar days from the date the complaint was filed.

C. CRIMINAL FRAUD AND ABUSE COMPLAINTS

(1) Complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately to the United States Department of Labor, Office of Investigator General, Office of Investigations, Room 55514, 200 Constitution Avenue NW, Washington, D.C. 10210 or to the regional inspector general at (972) 850-4000.

(2) The USDOL hotline number for criminal complaints is 1-800-347-3756.

D. MAINTENANCE OF RECORDS. The SAE and LWDBs shall make provisions for the maintenance and retention of all records involving WIA complaints filed in accordance with WIA record retention requirements. Such records shall be retained for a period of three (3) program years from the date the complaint was filed unless an unresolved complaint is pending. In that case, records must be retained until final resolution of the complaint.

[11.2.26.8 NMAC - N, 12/31/05]

11.2.26.9 CONTACT ENTITY: Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827. [11.2.26.9 NMAC - N, 12/31/05]

11.2.26.10 DISTRIBUTION: SWDB and LWDB chairpersons, LWDB administrative entities, all SAE WIA subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records. [11.2.26.10 NMAC - N, 12/31/05]

HISTORY OF 11.2.26 NMAC:
History of Repealed Material:
11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed 6/23/00 - Repealed 12/31/05

**NEW MEXICO
OFFICE OF WORKFORCE
TRAINING AND
DEVELOPMENT**

**TITLE 11 LABOR AND
WORKERS' COMPENSATION
CHAPTER 2 JOB TRAINING
PART 27 WIA EQUAL
OPPORTUNITY REQUIREMENTS
AND DISCRIMINATION COM-
PLAINT RESOLUTION PROCEDURE**

11.2.27.1 ISSUING AGENCY: The New Mexico Office of Workforce Training and Development (OWTD). [11.2.27.1 NMAC - N, 12/31/2005]

11.2.27.2 SCOPE: The Workforce Investment Act (WIA) state administrative entity (SAE), state workforce development board (SWDB), local workforce development boards (LWDBs), and all SAE WIA subrecipients. [11.2.27.2 NMAC - N, 12/31/2005]

11.2.27.3 STATUTORY AUTHORITY: Workforce Development Act Chapter 50, Article 14, NMSA 1978 [11.2.27.3 NMAC - N, 12/31/2005]

11.2.27.4 DURATION: Permanent. [11.2.27.4 NMAC - N, 12/31/2005]

11.2.27.5 EFFECTIVE DATE: December 31, 2005, unless a later date is cited at the end of a section. [11.2.27.5 NMAC - N, 12/31/2005]

11.2.27.6 OBJECTIVE:
A. This rule sets forth requirements for compliance with the equal opportunity and nondiscrimination requirements by recipients of WIA Title I federal financial assistance.

B. This rule also sets forth the complaint resolution procedures for discrimination complaints. [11.2.27.6 NMAC - N, 12/31/2005]

11.2.27.7 DEFINITIONS: [RESERVED]

11.2.27.8 ACTION: References include the following: Public Law 105-220, Workforce Investment Act (WIA), 29 CFR, Part 37, 20 CFR Section 667.275, 20 CFR Section 667.600(g)(1)(2) and training and Employment information notice (TEIN) No. 16-99.

A. Recipients of WIA title I federal financial assistance have nine (9) basic requirements which are summarized as follows:

- (1) designate an equal employment opportunity officer;
- (2) communicate equal employment opportunity policy and train staff to carry it out;
- (3) review all contracts, plans, and agreements for equal opportunity;
- (4) make efforts to provide equitable services among substantial segments of the eligible population;
- (5) ensure program and site access to individuals with disabilities;
- (6) collect and maintain data to examine discrimination;

(7) monitor recipients for compliance;

(8) receive and process discrimination complaints; and

(9) obtain corrective action or apply sanctions for violating nondiscrimination requirements.

B. All WIA recipients shall perform an annual self-appraisal to ensure and document compliance with the above listed requirements. This will include completion by each LWDB and/or its service providers of the five (5) accessibility checklists, set forth in USDOL training and information notice no. 16-99, available on the web at: www.wia.state.nm.us; or www.doleta.gov/directives.

C. Discrimination complaints.

(1) Who may file:

(a) Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or its implementing regulations may file a written complaint, either by him/herself or through an authorized representative.

(b) WIA prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, discrimination on the basis of either citizenship or status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA title I financially assisted program or activity; Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color and national origin; section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination against qualified individuals with disabilities; The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

(2) Time and place for filing:

(a) Discrimination complaints must be filed within 180 days of the alleged discrimination. However, a complainant may petition the director of the civil rights center for an extension of the filing time.

(b) Discrimination complaints may be filed with a state or local administrative entity, service provider, one-stop operator or with the director of the civil rights center (CRC), U.S. department of labor, 200 Constitution Ave. NW, room N-4123, Washington D.C. 20210.

(3) Time limit for completing complaint processing procedures: The discrimination complaint processing procedures must be completed and a written

notice of final action issued within 90 calendar days from the date the complaint was filed.

(4) Procedure to be followed:

(a) Step 1: Initial review of written complaints. Written complaints will be taken by the state or local administrative entity, service provider, or one-stop operator from the complainant or the complainant's designated representative. A written complaint must include: 1) the complainant's name and address; 2) the identity of the individual or entity that the complainant alleges is responsible for the discrimination; 3) a description of the complainant's allegations in enough detail to allow an initial determination of jurisdiction, timeliness and the apparent merit of the complaint; and 4) the complainant's signature or the signature of the complainant's authorized representative.

(i) Record keeping.

All complaints must be logged. The log must include: 1) the name and address of the complainant, 2) the basis for the complaint, 3) a description of the complaint, 4) the disposition and date of disposition of the complaint, and any other pertinent information. Information that could lead to the identification of the person filing the complaint must be kept confidential.

(ii) Jurisdiction of the discrimination complaint must be determined. In order to have jurisdiction to process the discrimination complaint: 1) the respondent against whom the complaint was filed must be a WIA recipient, 2) the complaint must allege a basis for discrimination that is prohibited by WIA, and 3) the complaint must be filed within 180 calendar days of the alleged discrimination.

(iii) Notice of lack of jurisdiction. If a determination is made that there is no jurisdiction to process the complaint, a notice of lack of jurisdiction must be sent to the complaint that includes the reason for the determination and notice that the complainant has the right to file a complaint directly with the civil rights center within 30 calendar days from receipt of the notice of lack of jurisdiction.

(iv) Joint jurisdiction.

Where the complaint alleges discrimination by a WIA recipient, or service provider on a basis that is prohibited by *both* WIA and by a civil rights law independently enforced by that WIA recipient or service provider, the complaint must be referred to that WIA recipient or service provider for processing under their procedures. For example, WIA prohibits discrimination on the basis of national origin. If a discrimination complaint on the basis of national origin is made against a WIA recipient or service provider and they are also prohibited from discriminating on the basis of national origin, then

the complaint will be referred to them for processing according to their own procedures. Notice must be sent to the complainant about the referral.

(v) Sole jurisdiction.

1) Where the complaint alleges discrimination by a WIA recipient or service provider on a basis that is prohibited by WIA and is not covered by a civil rights law independently enforced by that WIA recipient or service provider (e.g., political affiliation or belief, citizenship or participation in WIA Title I), the complaint must be processed by that WIA recipient or service provider under these procedures. 2) When it is determined that WIA has sole jurisdiction over the discrimination complaint, the complaint will be referred to the equal opportunity (EO) officer of the New Mexico office of workforce training and development.

(b) Step 2: Formal resolution.

The EO officer must send written notice to the complainant stating that the complaint has been received. The notice must list the issues raised in the complaint and state for each issue whether it has been accepted for investigation or rejected and the reason for its rejection. The notice must advise that the complainant has the right to be represented by an attorney or another person of the complainant's choice. The notice must also give the complainant the right to choose between an alternative dispute resolution (ADR) process or a hearing.

(i) ADR process. 1) If the party filing the complaint requests to use the ADR process for resolving the complaint, the EO officer will request a mediator and monitor the processing of the complaint. The mediator will schedule mediation by written notice, mailed to all interested parties at least 7 calendar days prior to the first mediation session. The notice will include the date, time, and place of the mediation. The mediation process must be concluded within 45 calendar days from the date the complaint was filed. 2) The complaint is considered resolved when all parties to the complaint enter into a written agreement resolving the issues raised in the complaint. The written agreement must give notice that if the terms of the agreement are breached, the non-breaching party may file a complaint with CRC within 30 calendar days of the date the non-breaching party learns of the breach. 3) If the parties do not reach an agreement, the EO officer will forward the complaint to an impartial hearing officer for a hearing.

(ii) Hearing process. 1)

If the party filing the complaint requests a hearing to resolve the complaint, or if the ADR process fails to result in an agreement, the EO officer will forward the complaint to the impartial hearing officer and monitor the processing of the complaint. The hear-

ing officer will schedule a formal hearing by written notice, mailed to all interested parties at least 7 calendar days prior to the hearing. The notice will include the date, time, and place of the hearing. The hearing must be conducted within 60 calendar days from the date the complaint was filed. Parties may present witnesses and documentary evidence, and question others who present evidence and witnesses. Parties may be represented by an attorney or other designated representative, and may request that records and documents be produced. All testimony will be taken under oath or affirmation. The hearing will be recorded. The hearing officer's recommended resolution will include a summary of factual evidence given during the hearing and the conclusions upon which the recommendation is based. The hearing officer's recommended resolution must be completed and sent to the state administrative entity within 75 calendar days from the date the discrimination complaint was filed. 2) The state administrative entity will review the recommendation of the hearing officer and will issue a notice of final action within 90 calendar days from the date the discrimination complaint was filed.

(c) Step 3: Notice of final action.

The notice of final action must contain: 1) the WIA recipient's decision on each issue and the reasons for the decision, 2) a description of the way the parties resolved the issue, and 3) notice that the complainant has the right to file an appeal with CRC within 30 calendar days from the date the notice of final action is issued if dissatisfied with the WIA recipient's final action on the complaint.

[11.2.27.8 NMAC - N, 12/31/2005]

11.2.27.9 CONTACT ENTITY:

Inquiries regarding this rule should be directed to the state administrative entity (SAE) in Santa Fe at (505) 827-6827.

[11.2.27.9 NMAC - N, 12/31/2005]

11.2.27.10 DISTRIBUTION:

SWDB and LWDB chairpersons, LWDB administrative entities, all WIA SAE subrecipients, SAE legal counsel, SAE EEO officer, USDOL federal representative and New Mexico commission of public records.

[11.2.27.10 NMAC - N, 12/31/2005]

HISTORY OF 11.2.27 NMAC:

History of Repealed Material:

11.2.15 NMAC, Workforce Investment Act (WIA) Grievance Procedures, filed June 23, 2000 - Repealed 12/31/2005.

End of Adopted Rules Section

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Other Material Related to Administrative Law

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment Hospital ratio rules change - 2005

The proposed amendments to Part 7 of the rules were opened for public comment on November 9, 2005, for in person comment and through November 16, 2005, for written comment. Several comments were received from the public at the public hearing. Six written comments were received.

One commentator at the hearing applauded the efforts of the WCA and Advisory Council and further supports the rules changes as being more in line with market rates. The commentator believes that the allowance for the ambulatory surgical centers (ASCs) is generous and that, until the Hospital Ratio Task Force comes up with a permanent rule, the proposed rule is adequate.

There was a presentation by New Mexico Mutual Casualty Company to illustrate the growth of medical severity in New Mexico in comparison with the national average. The presentation demonstrated the savings the proposed rule will have if implemented, which would result in a direct savings on rates assessed. New Mexico Mutual suggested several provisions for inclusion in the proposed rule that would continue to move the industry towards market rates.

Another commentator at the hearing suggested that hospitals have a target on their back. He and the New Mexico Hospital and Health Services Association categorically oppose the proposed rule change. The workers' compensation process and payment delivery should not occur in a vacuum. The non-workers' compensation components of the health system currently underpay and underfund medical benefits, which affects how hospitals charge. These changes impact hospitals as a business. This rule change is a miscarriage of justice and the 5% reduction is arbitrary and unfounded and the process for reviewing rates is flawed. This rule change is a draconian, one-sided, heavy-handed power move on the part of the WCA. There was an e-mail encouraging support for the rule as being good news for the Business and Labor Coalition. The Task Force recommended an extension of the current rule. This proposed rule change is a complete surprise and illustrates that the system for review of rates is

tainted.

The Chair of the Task Force responded by saying that hospital rates need to be closer to market rates and believes they should be lowered in a prudent way. Hospitals should not suffer all at once.

A representative of the New Mexico Medical Society proposed a change to the conversion factor for anesthesia and an increase in deposition rates and cancellation fees. He was asked to submit written comments.

Written comment was received on behalf of the New Mexico Orthopedic Society requesting an amendment to the charge for non-clinical services at 11.4.7.15 and proposed an increase from \$45.00 to \$57.00 for completion of the Form Letter to Health Care Provider. A change in deposition fees was suggested from \$400.00 to \$675.00 for the first hour and from \$360.00 to \$550.00 for each additional hour. He also recommended a change to the cancellation policy requiring 72 hours' notice of a deposition cancellation. The WCA believes that 48 hours' notice of cancellation should be required. A change will be implemented at 11.4.7.15.C(4) requiring notice of a deposition cancellation of 48 hours. Other proposed changes will not be adopted at this time.

Another written comment was received on behalf of the New Mexico Society of Anesthesiologists proposing an increase to the anesthesia fee schedule from the current \$44.94 unit value to \$58.38 on the basis that the conversion factor has changed only once since 1995, despite the fact that medical group practice cost has increased over 50% since that time. Anesthesia rates were changed last year. The proposed change will not be implemented at this time.

Another representative of the New Mexico Medical Society stated that the minutes of the last Medical Advisory Committee meeting of 10/15/05 showed that it supported the recommendation of the Task Force to maintain the current ratio until the Task Force proposed a new methodology. He believes it is premature to lower fees until the Task Force accomplishes its mission.

Written comment was received asserting that the current deposition fee is a fair reimbursement and opposes an increase. The commentator recommends an accommodation in the form of a fee for cancelled depositions to provide for 48 hours' notice of cancellation or the HCP may be reimbursed

50% of the \$400.00 first hour deposition fee. HCPs should document "missed deposition" on its billing. Cancellation notice of 48 hours is reasonable and will be adopted. The other proposals will not be adopted at this time.

Mountain States Mutual Casualty Company expressed its support for New Mexico Mutual Casualty Company's position. Historically, fluctuation in costs contributed to the 1990 reduction. The current rise in medical costs warrants a reduction to control those costs.

One commentator believes that the Director overruled the recommendation of the Task Force expressed at the 10/15/05 Medical Advisory Committee meeting. She wanted to remind the WCA that the statute requires balancing the needs of the employer, the providers, the payer and the worker.

Another commentator proposed that the FASCs submit itemized billings for all services provided that are not unbundled because payers do not know what they're paying for. For non-CPT items, it is not clear how to bill MAP and pay at 1.5%. The mission of reducing costs and achieving fair market value may not be the same thing. The Task Force was formed because costs are rising. Hospital costs are the real driver of increasing medical costs and need to be reduced. It is just a scare tactic when health care providers threaten to stop taking workers' compensation claims. Fair market value is just a range. The Task Force is not saying pay the lowest possible price, just be fair about it. The workers' compensation system in Texas went to a Medicare plus system and health care providers did stop taking workers' compensation cases. Payers just want to pay fair market value and fair market value is lower than current medical costs.

A written comment was received proposing 4 different alternatives for reimbursement to ASCs: 1. current ratio calculation; 2. 185% Medicare APCs rates; 3. 70% of the 75th percentile of the Ingenix Usual and Customary Rates for Albuquerque, NM; or 4. 175% of MAP. Hospitals should not be equated with professional medical services. The proposed percentage of 150% of MAP represents a 12% decrease to one ASC where workers' compensation cases represent 15% of overall business. The ASCs will recognize a significant financial impact, even though they are the most cost effective outpatient provider. Why is the hospital proposal including ASCs when it was adjusted in response to excess hospital

charges?

Another comment was submitted in response to the comments presented at the public hearing. It supports the proposal submitted by the Hospital Association since it recognizes ASCs as providers of outpatient surgery. Outpatient surgery should remain payable at the current ratio calculation. It opposes Medicare ASC rates as a basis for payment. ASCs may have to turn away workers' compensation cases with such a significant loss in net revenue and then hospitals would have to provide the care. ASCs are not required to submit an itemized billing with any other payers and the procedure charges include all pre- and post-operative visits, supplies, medicine, laboratory costs, and the use of the operating room. The proposal allows for a ceiling of reimbursement of 70% but does not allow for a floor. It proposes four alternatives: 1. current ratio calculation; 2. maximum reimbursement allowance (MRA) fee schedule attached to the comment; 3. 70% of the 75th percentile of Ingenix usual and customary rates for Albuquerque; or 4. 185% Medicare hospital outpatient ambulatory payment classification rates. The reimbursement methodology for proposals 2-4 should include multiple procedure processing where the primary surgical procedure will be identified as the procedure with the highest calculated allowed and reimbursed at 100% of the applicable allowable. The secondary and subsequent procedures should be reimbursed at 50% of the applicable allowable. Implant reimbursement should remain the same and all procedures that do not have an established rate should be reimbursed at 70% of the outpatient surgical centers charge. Further, payment rates should be automatically adjusted every 12 months and adjust MRA's for new or deleted codes. Its preference is to be paid like hospital outpatient services; but, if not, opt for the alternatives it has proposed.

The Workers' Compensation Administration appreciates all of the comments submitted. In order to fulfill its' mission of containing medical costs, the Workers' Compensation Administration is implementing the proposed rule with one additional amendment to the method of payment for FASCs at 11.4.7.9.E(1). The new rule will read "(1) All FASCs will provide global billings by CPT code and shall be paid at the assigned MAP value times 1.5, effective for services from January 1, 2006 to December 31, 2006. Multiple procedures will be billed in accordance with 11.4.7.9.G(8)(a) and (b)." The WCA believes the multiple procedure rule will help reduce costs and still allow for global billings and a fair market reimbursement for

ASCs.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rule-making proceedings shall close upon execution of this document.

Alan M. Varela
Director
N.M. Workers' Compensation
Administration
December 6, 2005

**End of Other Material
Related to Administrative
Law Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 3	April 14
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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Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
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