

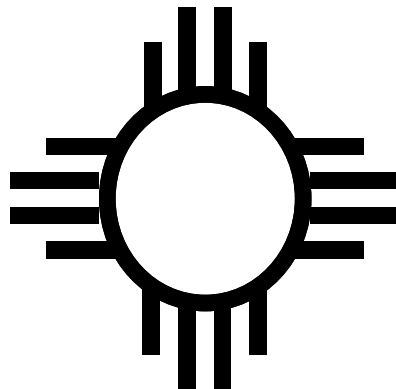
**NEW
MEXICO
REGISTER**



Volume XVII
Issue Number 5
March 15, 2006

New Mexico Register

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March 15, 2006



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

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New Mexico Register

Volume XVII, Number 5

March 15, 2006

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

PUBLIC ACCOUNTANCY BOARD
NOTICE OF PROPOSED
RULEMAKING

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Wednesday, April 19, 2006. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

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

NMAC NUMBER	RULE NAME
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements
16.60.4 NMAC	Firm Permit, Peer Review Requirements, and Business Name Prohibitions
16.60.5 NMAC	Code of Professional Conduct

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Monday, April 17, 2006; however, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Wednesday, April 12, 2006.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION NOTICE OF PUBLIC HEARING

The New Mexico Children, Youth and Families Department, Family Services, Office of the Secretary will hold a formal public hearing on Thursday, March 30, 2006 from 1 p.m. to 3 p.m., in the conference room, room 565, at the PERA building at 1920 Paseo de Peralta; Santa Fe, New Mexico, to receive public comments regarding the new regulation regarding the Pre-Employment Background Investigation Policy. This policy sets forth pre-employment background investigations for any applicant for a vacant position within

CYFD.

The proposed policy may be reviewed, or a copy obtained during the regular business hours of Employee Support Services; 1920 Paseo de Peralta, Santa Fe, New Mexico 87505. Please address inquiries to the attention of Barbara Auten.

Interested persons may testify at the hearing or submit written comments at the above address no later than 3:00 p.m. March 30, 2006. Written comments will be given the same consideration as oral testimony given at the hearing.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Employee Support Services at 505-

476-0139. Employee Support Services requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION LOCAL GOVERNMENT DIVISION

Notice of Hearing of
Rule 10.6.2 NMAC, Enhanced 911
Requirements

New Mexico Department of Finance and
Administration

The Department of Finance and Administration (DFA), Local Government Division, hereby gives notice that LGD will conduct a public hearing at State Capitol Building, Room 307, Santa Fe, New Mexico, 87501, on April 17, 2006 at 10:00 a.m. concerning the repeal of the current rule 10.6.2 NMAC, Enhanced 911 Requirements and the reenactment of rule 10.6.2 NMAC pursuant to Section 63-9D-8.1 NMSA 1978 and Section 9-6-5 E. NMSA 1978. The repeal and reenactment are due to changes in the Enhanced 911 Act, Sections 63-9D-1 etseq. NMSA 1978, effective July 1, 2005.

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on April 10, 2006, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the 10.6.2 NMAC. Copies of the text of the proposed rule are available from Ms. Juleann Martinez, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4973 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 6 LOCAL GOVERNMENT
LAW ENFORCEMENT AGENCIES
PART 2 ENHANCED 911
REQUIREMENTS**

10.6.2.1 ISSUING AGENCY:
Department of Finance and Administration,
Local Government Division.
[10.6.2.1 NMAC - Rp, 10.6.2.1 NMAC, xx-xx-xxxx]

10.6.2.2 SCOPE: The state, counties and incorporated cities, towns and villages.

[10.6.2.2 NMAC - Rp, 10.6.2.2 NMAC, xx-xx-xxxx]

10.6.2.3 STATUTORY AUTHORITY: This rule is promulgated pursuant to the authority granted in Section 63-9D-8.1 NMSA 1978 and is deemed necessary to carry out the provisions of the Enhanced 911 Act, Sections 63-9D-1 et seq. NMSA 1978.

[10.6.2.3 NMAC - Rp, 10.6.2.3 NMAC, xx-xx-xxxx]

10.6.2.4 DURATION: Permanent.

[10.6.2.4 NMAC - Rp, 10.6.2.4 NMAC, xx-xx-xxxx]

10.6.2.5 EFFECTIVE DATE: xx-xx-xxxx, unless a later date is cited at the end of a section.

[10.6.2.5 NMAC - Rp, 10.6.2.5 NMAC, xx-xx-xxxx]

10.6.2.6 OBJECTIVE: The objective of Part 2, Chapter 6 is to carry out the provisions of the Enhanced 911 Act. These rules and regulations are designed to assist in the development, operation and maintenance of a reliable, uniform E911 system. This act establishes a program to provide for the purchase, lease, installation and maintenance of E911 equipment, telecommunicator training, database preparation, database updates, compliance with federal communications commission (FCC) requirements for phase I and phase II wireless E911 service, and E911 network costs as necessary for an E911 system.

[10.6.2.6 NMAC - Rp, 10.6.2.6 NMAC, xx-xx-xxxx]

10.6.2.7 DEFINITIONS:

A. "701/709 error report" means an error report provided by local exchange carriers serving a PSAP area which details the phone numbers that were not successfully loaded into the 911 ALI database due to an MSAG or other error. A "701" error indicates a house number not in MSAG range. A "709" error indicates a street not found in the MSAG.

B. "911 emergency surcharge" means the monthly uniform charge assessed on each access line in the state and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico.

C. "911 line/trunk" means a line/trunk accessed by dialing 911 terminating at a PSAP. 911 lines on basic 911 systems are one-way incoming only. Outgoing calls can only be made while an incoming 911 call is on the trunk, to confer-

ence and/or transfer to another location.

D. "911 PSAP equipment" means the public safety answering point (PSAP) equipment directly related to the operation of an E911 system including, but not limited to, automatic number identification (ANI) displays, automatic location identification (ALI) displays, controllers, combined ANI\ALI displays, printers, generators, uninterruptible power supply (UPS), capability for the hearing impaired (TDD) 24/7 continuous logging recorders, work stations, wireless phase I and/or II mapping equipment, software associated with the system, telephones and other miscellaneous equipment necessary to dispatch emergency E911 calls.

E. "911 service area" means the area designated by the fiscal agent, local governing body or the division to receive enhanced 911 service.

F. "Access tandem" means the device that switches 911 calls to the proper PSAP.

G. "ADA" means Americans with Disabilities Act of Act of 1990.

H. "Alternate routing" means an optional feature that is capable of automatically rerouting 911 calls to a designated alternate location if all 911 trunks from a central office or a public safety answering point (PSAP) are out of service.

I. "Answering position" means a location within a PSAP equipped with an ANI and/or ALI display, printer or electronic storage media, telephone, and / or wireless call map display that is used to receive and display incoming E911 calls.

J. "Automatic location identification (ALI)" means a feature of E911, which displays the physical address of the telephone number that is being used to place the call. It requires a data storage and retrieval system, which matches a telephone number to its physical address. ALI information can include address (including room or floor), names of law enforcement, fire and medical agencies responsible for that address, type of service (e.g., residence, PBX, Centrex, coin), and name associated with the telephone number.

K. "Automatic number identification (ANI)" means a feature of E911, and sometimes basic 911 that automatically displays the telephone number of the person placing the 911 call at the PSAP. This is normally the telephone number of the person placing the call, but not always. For example, on older PBX systems, the ANI telephone number is normally the main number of the system. Therefore, off-premises stations will be identified as if they had the main telephone number (ANI) and as if they were located at the primary address of these older PBXs.

L. "Basic 911 service"

means a telephone service that automatically connects a person dialing the three-digit number 911 to an established public safety answering point through normal telephone service facilities.

M. "Board" means the state board of finance.

N. "Called party hold" means a feature of basic 911 service that enables a PSAP telecommunicator to retain control of an incoming 911 call even if the caller hangs up.

O. "Central office (CO)" means telephone company equipment that provides telephone service to the public. More than one CO may be located in the E911 service area.

P. "Continuous logging recorder" means a device, which records date, time, voice and TDD/TTY communications, and other transactions involved in the processing of calls to and from the PSAP on a 24/7 basis.

Q. "Cost recovery plan (plan)" means the plan submitted to the division by communication mobile radio service carriers to determine allowable costs.

R. "CMRS" means communication mobile radio service carriers.

S. "Database" means information that is collected, formatted and disseminated and that is necessary for the functioning of the E911 system, including geographic information system (GIS) addressing and digital mapping information.

T. "Default routing (default answering)" means a standard feature of E911 activated when an incoming 911 call cannot be selectively routed due to ANI failure, garbled digits, or other causes.

U. "Designated agents" means other partner (s) such as the county assessor, the city and/or county GIS personnel, pueblos and/or tribes within their geographic area, vendors and any person or entity doing addressing, mapping, GIS or MSAG tasks for a PSAP.

V. "Diverse routing" means (if available) the practice of routing calls through different circuit paths in order to prevent total loss of the 911 system in the event an individual circuit is disabled.

W. "Division" means the local government division of the department of finance and administration.

X. "E911 coordinator" means the person designated by the PSAP to serve as the coordinator to work with the division and telecommunication companies regarding 911 issues.

Y. "Emergency service number (ESN) / emergency service zone (ESZ)" means a number representing a unique combination of emergency service agencies (law enforcement, fire and emer-

gency medical service) designated to service a specific range of addresses within a particular geographical area, or emergency service zone (ESZ).

Z. "Enhanced 911 equipment" means the public safety answering point equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, logging recorders and software associated with call detail recording, call center work stations, training, latitude and longitude base station or cell site location data and GIS equipment necessary to obtain and process locational map and emergency service zone data for landline and wireless callers.

AA. "Enhanced 911 service" means service which delivers ANI and ALI to the PSAP.

BB. "Enhanced 911 system (E911)" means a landline and wireless E911 system, with the aid of a database management system, mapping and electronic switching that provides rapid and reliable public service response to emergency calls. The system provides:

(1) tandem routing or selective routing of calls to the appropriate PSAP;

(2) automatic number identification (ANI) and automatic location identification (ALI);

(3) one or more access paths for communication between users in different geographic locations through a network system that may be designed for voice or data, or both and may feature limited or open access and may employ appropriate analog, digital, switching or transmission technologies; and

(4) the relay to the designated public safety answering point a wireless 911 caller's number and base station or cell site location and the longitude and latitude of the wireless 911 caller's location in relationship to the designated public safety answering point.

CC. "Fiscal agent" means the local governing body that administers grants from the fund for a given locality or region by agreement.

DD. "Fund" means the enhanced 911 fund defined by Section 63-9D-8 NMSA 1978 created in the state treasury to be used for the purchase, lease, installation or maintenance of enhanced 911 equipment as defined by Section 63-9D-3 (K) NMSA 1978 necessary for an enhanced 911 system.

EE. "GIS" means geographic information system.

FF. "GIS providers" means any individual, entity or agency creating or managing data for GIS addressing and mapping within a PSAP service area.

GG. "Forced disconnect" means a basic 911 feature, which allows a PSAP attendant to disconnect a 911 call and prevents intentionally jamming of 911 lines by callers who refuse to hang up. E911 uses the "time-out" CO feature to "force disconnect".

HH. "Grantee" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipality Code that have received a grant pursuant to the E911 Act.

II. "Instant playback recorder" means a device that allows for the instant playback of the audio portion of a 911 call and a radio call at the E911 position.

JJ. "Local exchange access line" means a telephone line connecting a telephone to the telecommunications company's central office.

KK. "Local exchange area" means a geographic area encompassing one or more local communities served by a telecommunications company.

LL. "MSAG coordinator(s)" means the person, or in some cases, the persons responsible for assuring that the MSAG is correct and up-to-date.

MM. "Master street address guide (MSAG)" means the document or computer file that lists the physical street names (including the street prefix, suffix, and directional), address ranges, emergency service number and other routing codes used in the data management system (DMS) of an E911 system equipped with selective routing and/or automatic location identification.

NN. "Monthly recurring cost (MRC)" means costs incurred by CMRS carriers for monthly trunking (T-1's to the two 9-1-1 access tandems) and the monthly wireless systems service provider (3rd party vendor) cost.

OO. "National emergency number association (NENA)" means the national association of telecommunications professionals involved with 911 service. NENA recommends PSAP policies and guidance on wireless E911 call taking. Membership includes employees of federal, state and local government agencies, telecommunication companies, and other communications service and equipment vendors.

PP. "Network" means any system designed to provide one or more access paths for communications between users at different geographic locations; provided that a system may be designed for voice, data, or both, and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies.

QQ. "Non-recurring cost (NRC)" means one time costs incurred by CMRS carriers for initial connection fees to the two 911 access tandems and the wireless systems service provider (3rd party vendor non-recurring) cost.

RR. "Phase I cellular service" means the wireless carriers deliver a cellular 911 call to the PSAP nearest to the caller. At the PSAP the caller's phone number (ANI) will be available along with a map location of the carrier's tower receiving the wireless call with a probability factor, mapping an area from where the caller is located. This area may range from a square mile within a municipality, to several miles along a highway.

SS. "Phase II cellular service" means the wireless carriers will not only deliver a cellular 911 call to the PSAP nearest to the caller, but provide the caller's phone number (ANI) and the caller's approximate location (ALI) using the latitude and longitude of the caller with a probability factor.

TT. "Primary public safety answering point" means a PSAP equipped with automatic number identification and automatic location identification displays, wireless mapping equipment, and the first point of reception of an E911 call. It serves the 911 service area in which it is located, and other municipalities as may be determined by the service area committee.

UU. "PSAP consolidation" means the combining of one or more PSAPs within a county to form a single PSAP to serve the constituents previously served by the individual PSAPs.

VV. "PSAP serving area" means the geographic area containing a PSAP that is capable of answering all 911 calls and responding to them appropriately.

WW. "Public safety agency" means a public agency that provides law enforcement, fire, medical, and/or other emergency services.

XX. "Public safety answering point (PSAP)" means a twenty-four-hour local communications facility that receives 911 service calls and directly dispatches emergency response services or that relays calls to the appropriate public or private safety agency.

YY. "SAU" means a specific address unknown which is a record in the ALI database (with corresponding records in the MSAG) that does not have a valid street address associated with it.

ZZ. "Secondary public safety answering point" means a facility equipped with automatic number identification, automatic location identification displays and all other features common to primary PSAPs. It receives 911 calls only when they are transferred from the primary

PSAP or on an alternate routing basis when calls cannot be completed to the primary PSAP.

AAA. "Selective routing database" means the routing table that contains telephone number to ESN relationships which determines the routing of 911 calls.

BBB. "Selective transfer" means that on systems with selective transfer, calls are routed to the proper secondary PSAP(s).

CCC. "Service area" means the geographic area in which one or more entities participating in a 911 system are responsible for responding to all 911 calls and for ensuring that appropriate emergency assistance is dispatched.

DDD. "Speed calling" means abbreviated dialing which can be programmed in a central office to allow calling of seven or ten digit numbers by dialing only one or two digits. On E911, a separate 30 number (two digit) speed call list may be provided for each primary and secondary PSAP as a standard feature.

EEE. "Tandem routing or selective routing" means a feature that permits an E911 call to be routed to the designated primary PSAP based upon the telephone number of the calling party. This feature routes calls to the primary PSAP responsible for emergencies at the address of the telephone placing the call based on the ANI telephone number and associated emergency service number (ESN) in the tandem office.

FFF. "Telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunication services capable of originating an E911 call, to include any database management company contracted to create or maintain the PSAP's MSAG.

GGG. "Telephone devise for the hearing impaired/teletype (TDD/TTY)" means a telecommunication device consisting of modems that permit typed telephone conversations with or between hearing or speech-impaired people.

HHH. "Wireless / cellular" means a telephone linked to the public switched telephone network (PSTN) via a radio link through a company providing the radio link from various tower / antenna sites through which their switching equipment connects the wireless caller to the PSTN. Phase I wireless companies connect the wireless caller to the nearest PSAP by using the cell tower location being used by the cellular caller and selective routing.

III. "WE911" means wireless enhanced 911.

JJJ. "Wireless working group (WWG)" means an advisory committee consisting of members directly involved

in the phase I and phase II implementation of a PSAP and may consist of personnel from the division, the PSAP, the local and/or Qwest telephone company, wireless call-routing vendor, NM department of public safety (DPS) and the applicable local staff that provides local geographic information services (GIS). This advisory committee serves at the discretion of the division and may dissolved when no longer needed.

KKK. "Uninterruptible power supply (UPS)" means a system designed to provide power, during a period when the normal power supply is incapable of performing up to par.

LLL. "USPS Publication 28" means an extensive standards guide authored by the United States postal service (USPS) that governs acceptable road naming and addressing standards appropriate for E911 MSAG and addressing.

MMM. "Vendor" means a person that provides enhanced 911 equipment, system, service or network support. [10.6.2.7 NMAC - Rp, 10.6.2.7 NMAC, xx-xx-xxxx]

10.6.2.8 INTRODUCTION:

A. In New Mexico, the responsibility and authority for delivering emergency medical services, public fire protection, and law enforcement generally rests with the state, counties, and municipalities. This is true even when supplemental services are performed by others, such as private ambulance companies or independent public authorities and non-profit organizations with limited internal fire protection and security forces.

B. An E911 telephone emergency system provides:

(1) expansion of the capabilities of the basic 911 emergency telephone number;

(2) faster response time, which minimizes the loss of life and property;

(3) automatic routing to the appropriate public safety answering point;

(4) immediate visual display of the telephone number, name, and address or location of the calling party; and

(5) identifies callers, curtailing abuse of the emergency system.

[10.6.2.8 NMAC - Rp, 10.6.2.8 NMAC, xx-xx-xxxx]

10.6.2.9 GUIDELINES:

A. Guidelines for basic and E911 service, system, equipment and network design and maintenance shall be established by the division following the best nationally accepted concepts and operating practices.

B. E911 call information shall follow the national NENA standards.

[10.6.2.9 NMAC - Rp, 10.6.2.9 NMAC, xx-

xx-xxxx]

10.6.2.10 DATABASE DEVELOPMENT REQUIREMENTS:

A. Database:

(1) The grantee and its designated agents shall work with the telecommunication company(s) to verify street names, address number ranges, and emergency service zones (ESZ), postal community and other information needed to create MSAG. These same agents shall also work to assign and/or verify the 9-1-1 address associated with each landline telephone number within the PSAP's geographic boundary. All database information shall be provided to the telecommunication company(ies) in the format specified by the telecommunication company(ies) for the initial load of these databases. All road name and community database information shall be submitted and maintained in format and content compliant with the USPS Publication 28.

(2) The E911 coordinator, as defined by Subsection D of 10.6.2.11 NMAC, or his/her appointed MSAG coordinator(s), shall ensure that changes and additions to road network and the emergency service boundaries (ESZ) in the geographic boundary of the PSAP are communicated to the telecommunications company(ies) in the form of MSAG updates on a continuous and timely basis. The telecommunications company(ies) shall dictate the format and transmission method of these MSAG updates. The E911 coordinator or his/her appointed MSAG coordinator(s) and the telecommunications company shall ensure that all submitted changes, deletes and additions to the master street address guide (MSAG) are changed, deleted or added in the loaded MSAG maintained by the telecommunications company(ies). The E911 coordinator or his/her appointed MSAG coordinator(s) shall thoroughly review the loaded MSAG periodically, no less frequently than once a month, to ensure that submitted changes, deletes and additions have been properly made and entered by the telecommunications company(ies).

(3) All PSAPs shall conduct a yearly review of the MSAG, ALI and GIS databases to ensure the data in these documents is accurate and synchronized. The review shall:

(a) include the following information requested by each PSAP from the serving telecommunications company(ies) and database provider(s):

(i) complete MSAG extract for entire PSAP boundary area;

(ii) complete ALI extract for entire PSAP boundary area, to include SAUs, if any;

(iii) complete 701/709 error reports from all serving local exchange providers (telecommunications

company(ies));

(iv) number of landline phones within PSAP boundaries;

(v) road centerline layer(s); and

(vi) ESZ layer(s);

(b) include output that documents a 96% or higher MSAG accuracy rate:

(i) the process used shall determine the number of accurate ALI records, after adjustment for SAUs, by comparison of a new MSAG extract to a new ALI extract; the house number, road name and ESN for each ALI record must match a corresponding MSAG record; the accuracy formula is the number of accurate ALI records found in this comparison divided by the total number of landline access numbers; this rate must equal 96% or higher;

(ii) list of SAUs found in the MSAG and ALI extracts with a timeline for correction of SAUs;

(iii) list of roads/road segments that appear in the MSAG that do not appear in the GIS; and

(iv) list of roads/road segments that appear in the GIS but that do not appear in the MSAG;

(c) be submitted annually to the division and shall be shared with E911 coordinator and GIS providers; the E911 coordinator and/or his/her designated agents, together with the GIS providers, shall work to correct these errors and inconsistencies and distribute the corrections to the appropriate telecommunications agencies, as indicated.

(4) The division requires that all municipal and county public safety answering points (PSAPs) maintain accurate MSAG, ALI and GIS databases. Except as provided for in Paragraph (5) of Subsection A of 10.6.2.10 NMAC, beginning on July 1, 2006 the MSAG and ALI must be maintained at 96% or higher accuracy. This means 96% of all landline telephone numbers in the PSAP area must be matched with MSAG-valid 9-1-1 addresses and these addresses must be loaded in the ALI database. PSAPs shall meet the required accuracy levels as a precondition to applying for and receiving funding for E911 equipment upgrades from the fund.

(5) Exceptions to Paragraph (4) of Subsection A of 10.6.2.10 NMAC may be requested in writing to the secretary of the department of finance and administration with an approved plan detailing how the PSAPs shall achieve the accuracy rate of 96%.

(a) The plan will include the tasks to be completed, completion dates, individuals or entities involved and will designate one person responsible for successful and timely execution of the plan.

(b) The secretary's decision on

granting or denying an exception to Paragraph (4) of Subsection A of 10.6.2.10 NMAC is final and not appealable.

(6) All telecommunication companies shall update the "selective routing database", MSAG and ALI within 48 hours of completion of a service order by the telecommunication company. Telecommunication companies shall ensure that all submitted changes, deletes and additions have been applied to the telecommunication databases in a timely manner. If required by telecommunication companies, the E911 coordinator or his/her appointed MSAG coordinator(s) will provide a yearly summary of changes submitted in the past year to the telecommunication company(ies).

B. ALI:

(1) Every telecommunication company providing ALI shall present uniform data, as defined by the NENA standards.

(2) The ALI shall be displayed and printed or archived immediately in the database when the 911 call is made.

(3) Each ALI data set shall include as a minimum:

(a) area code and telephone number;

(b) class of service;

(c) time in a 24-hour format (may be printed and not displayed);

(d) date (may be printed and not displayed);

(e) subscriber name or designation of non-published number;

(f) house (building) number;

(g) house number (building) suffix;

(h) directional prefix (NE, NW, SE, SW);

(i) street name including type;

(j) emergency service number location;

(k) community name;

(l) the state name;

(m) emergency service number;

(n) pilot number;

(o) emergency service number translation;

(p) any comments present;

(q) emergency response names of law enforcement, fire and EMS.

(4) ALI information shall use conventional English or NENA standard abbreviations where necessary and shall not use single letter or digit codes.

C. Database development of physical addresses: Addressing guidelines in addition to the requirements of this rule shall be established by the division. These guidelines must be followed by grantees that seek reimbursement for costs from the fund.

D. Other classes of serv-

ice:

(1) The wireless working group shall advise the division on the development of procedures for:

(a) the delivery of cellular / wireless service to the 911 service area, and;

(b) the establishment of a statewide standard PSAP screen display format for the phase I and phase II information.

(2) Personal communications networks and any other future mobile and/or personal communications systems shall also be required to adhere to Subsection D of 10.6.2.10 NMAC above.

(3) Effective May 28, 2004, all new or upgraded customer owned or leased private branch exchanges (PBX) will incorporate a software package that when 911 is dialed from any extension, the extension number, name of the extension user, building address, room number and building floor, is passed through to the proper PSAP handling the call

(4) Effective May 28, 2004, the owner or lessee shall remit to the department of taxation and revenue the E911 surcharge for each activated telephone extension on the PBX.

[10.6.2.10 NMAC - Rp, 10.6.2.10 NMAC, xx-xx-xxxx]

10.6.2.11 PSAP EQUIPMENT, ACQUISITION AND DISBURSEMENT OF FUNDS:

A. The PSAP equipment must be capable of handling emergency call volumes to meet the needs of the public. This equipment must be compatible with that of the telecommunication company providing the 911 network and database.

B. In order to qualify for a PSAP, an applicant shall have a 24 hour, 7 days per week (24/7) communication facility.

C. A public safety answering point, at a minimum shall be equipped with the following features:

(1) ANI;

(2) ALI;

(3) call detail information;

(4) default routing (default answering) until selective routing is approved by the division;

(5) ability to print call detail information with either paper or electronic media;

(6) ability to transfer voice or TDD/TTY and data;

(7) selective and fixed button transfer on E911 systems;

(8) a minimum of thirty (30) minutes uninterruptible power supply;

(9) TDD/TTY communications capability at each 911 answering position;

(10) switch hook status;

(11) for basic 911 be able to "ring

back”, i.e. phone back the 911 caller, put the caller on hold; disconnect the caller;

(12) 911 related calls, which pass through switching equipment, must provide transfer, conference, speed dialing and supervision of all calls until successfully transferred or terminated;

(13) each PSAP shall be equipped with at least one E911 answering position; when there is more than one answering position, they shall be similarly equipped with access to all incoming 911 lines, outgoing dedicated/switched lines, tie lines, and dial out lines;

(14) each PSAP shall be equipped with a continuous logging recorder; this logging recorder shall have:

(a) the capacity to record both sides of a conversation on each incoming 911 call and all radio communications while dispatching the 911 call;

(b) the ability to continuously document the year, date and time of each recorded event and the capability to record both voice and TDD/TTY;

(15) to maintain reliability, each PSAP shall be equipped with instant play-back voice recorders at each call answering and radio position;

(16) each 911 trunk will have incoming emergency calls identified by both audible and visual and different indicators for landline and wireless trunks;

(17) each PSAP shall have sufficient 911 answering positions and staff to ensure that ninety percent (90%) of all 911 calls are answered in no more than ten (10) seconds and the balance of the calls within twenty (20) seconds during normal peak operating periods; staffing levels may vary during the working day to meet this requirement;

(18) for quality assurance and training purposes, PSAP answering equipment shall be provided for supervisors so they can monitor incoming emergency calls;

(19) each PSAP may be provided equipment furniture to adequately support the E911 and radio equipment, and the telecommunicators and dispatchers;

(20) each PSAP will have a back-up generator capable of keeping the PSAP operating until commercial power is restored; and

(21) each PSAP will have a written agreement with a fully equipped PSAP capable of taking the PSAP’s calls and dispatching the appropriate emergency response; PSAP transfer is accomplished by use of the “make busy” circuit, or calling the E911 center to reroute their 911 calls to the agreed upon PSAP.

D. PSAP administration:

(1) Every grantee participating in the E911 system shall designate someone to serve as a coordinator to work with the divi-

sion and the telecommunication company regarding 911 issues.

(2) All coordinators working with the division and the telecommunication company regarding 911 issues will have personal work email address for receiving information regarding training classes, consolidation efforts, and transmittal of information required by this office.

(3) Only incorporated municipalities, counties, state police or native American tribes or pueblos, public safety agencies or their authorized agents may receive 911 calls.

(4) The 911 number shall be used to receive incoming emergency calls transferred to the PSAP by other PSAPs for certain alternate and default routing arrangements.

(5) 911 trunks shall not be used to make outgoing calls, but may be used to make outgoing transfer 911 calls if there is an incoming 911 call on the line/trunk.

(6) 911 trunks shall be used solely to receive emergency 911 calls at primary PSAPs and the transfer of 911 calls to another PSAPs.

(7) There shall be at least one PSAP operating 24 hours a day within the 911 service area. Municipalities and counties shall participate and assist with the operational costs necessary to maintain the service.

(8) Each PSAP shall maintain an up-to-date detailed profile of the PSAP. This profile shall include at a minimum:

(a) exact address of the PSAP;

(b) number and type of positions;

(c) type of equipment to include E911 call answering equipment, telephone switching equipment, wireless mapping equipment; and CAD system, radio system, and make and model of UPS and back-up generator;

(d) number and type of dedicated/switched voice/data circuits;

(e) routing central office and PSAP end office;

(f) maintenance control center to include name of company, physical address, telephone number, email address, and your point of contact for E911 equipment and voice logging recorder, if different from E911 equipment maintainer;

(g) PSAP coordinator and alternate contact name, address, phone number, and their PSAP email address;

(h) type and manufacturer of CAD system, if any, and type and manufacturer of voice logging recorder;

(i) GIS representative to include physical address, telephone number, and email address.

(9) Each PSAP shall maintain at least one unpublished seven-digit emergency number. This number shall also be used to receive incoming emergency calls

transferred to the PSAP by other PSAPs for certain alternate and default routing arrangements.

(10) The PSAP shall be responsible for coordinating the “emergency service listing” on the inside front page(s) of their local telephone directories. Each PSAP will have a published seven-digit number for non-emergency calls

(11) Subscriber information provided in accordance with the 911 system shall be used only for the purpose of responding to emergency calls or for use in any ensuing investigation or prosecution directly resulting from a 911 call, including the investigation of false or intentionally misleading reports of incidents requiring emergency service.

(12) All voice and TDD/TTY recordings of incoming 911 calls shall be retained in accordance with state records center and archives regulations for municipal police and county sheriff records.

(13) Except for those devices, such as TDD/TTY, used by disabled persons requesting emergency assistance, no individual or company shall be allowed to send an automatic alarm or use an alerting device that causes 911 to be automatically dialed and to transmit a prerecorded signal or message to the PSAP on a 911 line.

(14) PSAP personnel shall program and maintain a list of the fixed and auto-dial transfer features. This feature will allow the PSAP to use the dedicated/switched 911 network to transfer 911 calls pertaining to emergencies outside its jurisdiction, to the appropriate PSAP. When a 911 caller is transferred, the transferring PSAP shall announce to the receiving PSAP that they are transferring a call for service. Will remain on the line and will inform the receiving PSAP that this is a transferred call for service.

(15) Call handling procedures and other related PSAP operations shall be implemented according to the training guidelines established by the division. Each PSAP shall have the ability to:

(a) transfer 911 calls to their back-up PSAP or another PSAP within or outside their 911 service area;

(b) directly dispatch public safety services or relay information to a public safety agency; all PSAPs that transfer 911 calls to a 7-digit administrative telephone line for the purpose of an outside the PSAP agency dispatching emergency services will obtain from, and have on file, a release of liability from the dispatch agency, and must forward a copy of the release to LGD for file; or,

(c) directly dispatch public safety services.

(16) Any emergency unit dispatched to a location outside its jurisdiction in response to a request shall render servic-

es to the requesting party until relieved by the public safety agency responsible for that geographical area.

(17) All PSAPs shall be staffed 24-hours-a-day, seven-days-a-week, and operated by personnel certified by the state department of public safety pursuant to Section 29-7A-4 NMSA 1978, as amended. Staffing levels may vary during the working day to meet this requirement.

(18) Special circumstances:

(a) In accordance with ADA each PSAP shall establish procedures to handle calls from speech and hearing impaired individuals via TDD/TTY including the use of TDD call detectors and diverters.

(b) PSAPs shall develop procedures for handling an unanswered or silent 911 call and are urged to dispatch a public safety response unit(s) if the PSAP receives no response to the call back.

(19) Every PSAP will prepare an annual report for the division to include the information in Paragraphs (8), (9), (14) and (18) of Subsection D of 10.6.2.11 NMAC, above. Send the report electronically (email), or if email is not available, by regular mail to arrive at the division not later than June 30th of each year.

(20) Callers to 911 may only be transferred once to another PSAP. If, after the transfer, the 911 caller is not connected to the appropriate PSAP, the receiving PSAP shall take all of the necessary information to handle the call and then contact the appropriate PSAP for response.

(21) When a 911 caller is transferred, the transferring PSAP shall announce to the receiving PSAP that they are transferring a call for service. The transferring PSAP may stay on the line until such time as they are released.

(22) Each PSAP shall devise a contingency plan to provide continued emergency service when the PSAP is out of service.

E. Funding, eligible costs:

(1) The cost of enhanced 911 equipment necessary to provide E911 service may be recovered from the fund, including costs associated with the purchase, lease, installation of enhanced 911 equipment as well as enhanced 911 equipment furniture, training, and maintenance, with the exception of CAD, mobile and portable radio equipment and logging recorder maintenance.

(2) Money for other equipment indirectly related to the E911 system is the responsibility of the grantee, unless, the division approves of such equipment.

(3) The network capability costs and database and services necessary for an E911 system can be recovered from the fund.

(4) Costs for addressing including

equipment and labor may be funded based upon demonstrated need and the availability of funds. Demonstrated need may include the maintenance on all software that the GIS / rural addressing departments use to create data for the PSAPs.

(5) Grantees that have received approval from the division may incur and recover course registration costs to train telecommunicators and GIS personnel from the fund.

(6) Upon prior approval of the division, travel mileage and / or per diem for telecommunicator and GIS personnel training may be reimbursed, while any request for travel mileage and / or per diem without prior approval will NOT be reimbursed.

(7) Mapping equipment and network for wireless phase I and phase II, and cost recovery for wireless service providers.

F. Funding, ineligible costs:

(1) basic termination charges incurred due to the disconnection of telephone equipment to be replaced with 911 equipment;

(2) capital outlay expenditures, such as, buildings, remodeling, moveable chattels, communication towers and equipment not directly related to a 911 telecommunicator position;

(3) mobile radios, pagers or cellular telephones;

(4) seven-digit transfer-to-lines;

(5) incoming emergency seven-digit line group;

(6) costs associated with implementing or maintaining basic or E 911 systems or features not approved in writing by the division;

(7) private line circuit costs unless approved by the division;

(8) directory listings;

(9) call volume indicators used after the initial twelve month implementation or when not otherwise justified;

(10) maintenance costs for radio equipment and other miscellaneous equipment that is not determined to be 911 PSAP equipment;

(11) direct or indirect overhead costs, such as contributions to retirement, health insurance, labor, departmental operation overhead, rent, utilities or building remodeling;

(12) Reimbursement for equipment not previously approved by the division prior to purchase.

[10.6.2.11 NMAC - Rp, 10.6.2.11 NMAC, xx-xx-xxxx]

10.6.2.12 REVIEW AND APPROVAL PROCESS:

A. After requesting enhanced 911 service from a telecommuni-

cations company or CMRS, a local governing body, acting as the fiscal agent for a PSAP, may by ordinance or resolution, recover from the fund an amount necessary to recover the approved costs of providing the enhanced 911 system in its designated 911 service area.

B. The PSAP and its fiscal agent make a formal written request to the E911 program manager at the division for funding assistance in upgrading their current equipment or adding new equipment to meet new PSAP responsibilities or other eligible costs.

C. If applicable, a project manager from the division will make a site visit to the PSAP to determine the need and funding eligibility for the requested equipment and its conformance with advancing short or long-term policy to consolidate PSAPs.

D. If after discussions with the PSAP manager and his/her clients, the division believes the request has merit, is eligible for funding, and is consistent with PSAP consolidation policy, the PSAP in conjunction with the division will request price proposals from appropriate state price agreement vendors. The division promotes the consolidation of PSAPs and discussions will be held with all participants to determine the feasibility of consolidation. Discussion items will consist of the following:

(1) age and useful life remaining of existing equipment;

(2) estimated maintenance costs of continued use of existing equipment;

(3) equipment manufacturer's commitment to continued maintenance support of the existing equipment;

(4) continued use of analog technology vs. updating to digital technology;

(5) potential impact of wireless E911 implementation on PSAP and its continued use of existing equipment;

(6) PSAP vendors and telephone companies' readiness to install equipment;

(7) desire of PSAPs and their clients to consolidate all PSAP / dispatch functions at that time; and,

(8) the municipal and county governments' ability to fund supporting infrastructure for a consolidated PSAP.

E. If the division determines the request does not have merit or there is inadequate funding available for the request, it will be returned to the PSAP as "not approved by the division".

F. Validated PSAP requests that have passed the above process, will be forwarded in writing by the PSAP and the PSAP's fiscal agent to the division director for approval to place the request(s) on the board of finance meeting agenda.

G. Any item(s) that the

division director determines are inappropriate will not be approved for inclusion in the board's meeting agenda. Rejected requests will be returned to the PSAP as "not approved by the division".

H. The division will present the E911 funding project list to the board for approval.

I. Fully executed grant agreement(s) and subcontract(s) shall be provided to the division for the official file. If necessary, subcontracts shall be procured in accordance with the New Mexico Procurement Code and applicable regulations.

[10.6.2.12 NMAC - Rp, 10.6.2.12 NMAC, xx-xx-xxxx]

10.6.2.13 GEOGRAPHIC INFORMATION SYSTEMS (GIS) STANDARDS:

In order to ensure that road centerline shapefiles can be effectively used and integrated at a statewide level, standards are needed for attribute data consistency and the development of spatial data by entities creating them with geographic information systems (GIS). Pursuant to 63-9D-4 NMSA 1978, a local governing body in an enhanced 911 service area shall provide GIS addressing and digital mapping to the PSAP that provides enhanced 911 service to the local governing body, as follows:

A. The attribution data content shall be derived from standards established by the national emergency number association (NENA). The attribution data format and structure is also based on, but not identical to, NENA standards.

B. The datum for geographic data shall be North American Datum 1983 (NAD 83) and the data shall be in a New Mexico state plane or universal transverse mercator (zone 12 or 13) projection. The geographic data shall be spatially complete for each GIS entity's defined area of responsibility, but must not extend past their geographic area of responsibility. Additionally, any road feature that extends beyond one entity's geographic area of responsibility shall align with the same feature maintained by the adjacent entity.

C. Spatial accuracy of geographic features is required to be such that they are representative of the actual feature at a scale of 1:5000. All geographic features shall have clean topology and shall be able to be utilized to form a statewide road network with connectivity. All attribution and geographic data shall be kept current through regular maintenance.

D. To ensure accurate dispatch call mapping, attribute data associated with GIS data shall be synchronized with MSAG and ALI data. This attribute data includes all components of road name and address ranges. Road name designations, including spelling, directional use, suffix

types and abbreviations, shall match the road name values used in the MSAG. Road ranges in the GIS shall match or be included in road ranges in the MSAG.

E. The PSAP shall update the MSAG within 10 working days to reflect changes in addressing and mapping. [10.6.2.13 NMAC - Rp, 10.6.2.13 NMAC, xx-xx-xxxx]

10.6.2.14 PLANNING AND IMPLEMENTATION OF ENHANCED WIRELESS SERVICE:

A. E911 service to include phase I and phase II wireless shall be provided to the entire telecommunication company(s) service area(s) and should be implemented on a countywide or regional basis.

B. Where a telecommunication company's local exchange area extends into or encompasses two or more E911 service areas, the wireless working group (WWG) shall be responsible for initiating and establishing E911 wireless service areas.

C. The division shall have final approval authority after the PSAP and the telecommunication company identifies the need for selective routing and the associated network through which all calls for service are to be processed. The WWG through the division shall have final authority over the selective routing of the wireless venter coverage areas.

D. If the grantee, the E911 coordinator or the MSAG coordinator(s) requests a MSAG and/or a copy of the telecommunication company's "old-to-new" records in either printed or electronic format the telecommunication company shall comply within 20 working days.

E. When the MSAG and ALI have been completed and loaded onto the database, they shall be jointly owned by the PSAP and the telecommunications company.

F. The telecommunications company shall provide an updated MSAG to the PSAP upon installation completion and thereafter as requested by the PSAP.

G. The data management system and selective routing database shall be updated by the telecommunication's company within 48 hours of completion of a service order by the telecommunications company.

H. The division shall have final approval authority of the addressing system, and GIS system used to develop the database adequate to support E911 and E911 wireless services.

[10.6.2.14 NMAC - Rp, 10.6.2.14 NMAC, xx-xx-xxxx]

10.6.2.15 PSAP CONSOLIDATION:

A. The division requires that municipal and county public safety answering points (PSAPs) within their contiguous county boundaries consolidate their 911 call answering and radio dispatch functions within one consolidated PSAP in the county. Only the consolidated PSAP in the county may apply for and receive funding for E911 equipment, equipment maintenance, training reimbursement, trunk and ALI lines; and E911 call taking and mapping equipment from the E911 fund for phase I and phase II enhanced wireless service.

B. Albuquerque police department PSAP and Bernalillo county's PSAP are excluded from 10.6.2.15 NMAC due to the large population served. The department of public safety district PSAPs; and native American pueblos and tribal police and also excluded from 10.6.2.15 NMAC.

C. Exceptions to 10.6.2.15 NMAC may be requested in writing with full justification to the division.

(1) Justification shall include cost considerations, population served, and proximity to the PSAP's back-up PSAP.

(2) The division's decision on granting an exception to 10.6.2.15 NMAC is final and not appealable.

D. Municipal and county PSAPs within one county's contiguous boundaries have one year from May 28, 2004 to develop a consolidation plan and enter into an approved joint powers agreement (JPA) for the consolidation of their E911 call answering and radio dispatch functions within one consolidated PSAP in the county.

(1) Consolidation plans will be approved / disapproved by the division.

(2) PSAPs shall consolidate in accordance with the plan, unless granted an exception, as a precondition to applying for and receiving funding for E911 equipment upgrades from the fund.

(3) If the consolidation plan and JPA requirements are not met, the applicable 911 grant agreement with the PSAPs governing bodies may be terminated in accordance with the terms and conditions of the grant agreement.

E. The division will work with municipal and county governments to prepare their consolidation plan in order to meet the requirements identified in this section.

[10.6.2.15 NMAC - Rp, 10.6.2.15 NMAC, xx-xx-xxxx]

10.6.2.16 TELECOMMUNICATOR / DISPATCHER TRAINING:

Pursuant to Section 63-9D-4A NMSA 1978, the local governing body shall require the PSAP to employ properly trained staff pursuant to the Public Safety

Telecommunication Training Act. Telecommunicators and dispatchers will be certified for two years and recertified for two-year intervals after that. In order to maintain certification, 20 hours of specified training will be required in each two-year interval. Course requirements needed for recertification are listed in 10.29.7 NMAC. Each PSAP manager or supervisor will appoint in writing a training officer. The training officer's name, duty phone number, and email address will be forward to the division, and resubmitted whenever the training officer is replaced. The training officer will be responsible for the following:

A. development of PSAP policies and procedures for ensuring every telecommunicator and dispatcher receives the required training;

B. keeping accurate written records on each individual's training; and

C. submitting, through the PSAP manager or supervisor, semi-annual reports in June and January to the division on the PSAP's training progress to include; number of telecommunicators and dispatchers trained, and the courses completed by each individual; and type and amount of training yet to be completed, and any problems encountered in meeting the training requirements of 10.29.7 NMAC; for information on training reimbursement see Subsection E of 10.6.2.11 NMAC. [10.6.2.16 NMAC - Rp, 10.6.2.16 NMAC, xx-xx-xxxx]

10.6.2.17 WIRELESS COST RECOVERY GUIDELINES: After requesting WE911 (wireless enhanced E911) from a CMRS, local governing bodies may, by ordinance or resolution in a form specified by the division, recover from the fund pursuant to Subsection G of Section 63-9D-8 NMSA 1978, the CMRS wireless enhanced 911 service carrier costs that meet the requirements in 10.6.2.17 NMAC. Pursuant to Subsection G of Section 63-9D-8 NMSA 1978, the division, on behalf of local governing bodies, shall directly pay or reimburse CMRS for their costs of providing WE911 service. In order to maintain adequate funding in the fund to provide enhanced 911 service and equipment to local governing bodies pursuant to Section 63-9D-8 NMSA 1978, the division shall reimburse only costs incurred by CMRS to provide enhanced wireless 911 service to municipal and county public safety answering points that are in accordance with the following:

A. All CMRS carriers shall submit a detailed cost recovery plan (plan), invoices and status reports to the division that meet the following criteria.

(1) The plan and invoices shall

include the one time, non-recurring cost (NRC) incurred by the CMRS carrier for the connection fee to the two 911 access tandems and the NRC for the wireless systems service provider (3rd party vendor).

(2) The plan and invoices shall include the CMRS carrier's monthly recurring (MRC) for trunking (T-1's to the two 911 access tandems) and the MRC for the wireless systems service provider (3rd party vendor).

(3) All other CMRS carrier costs are not currently eligible for cost recovery.

B. A plan or invoice submitted on behalf of a CMRS carrier by a third party shall include a letter of agency between the third party and the carrier, or have the letter on file. No plan or invoice submitted by a third party agent will be reviewed until the division receives notice of agency from the CMRS carrier.

C. The plan shall be submitted yearly by March 31st as a comprehensive statewide plan based on current circumstances. The plan shall detail the number of cell sites and the number of subscribers in each county, and the projected NRC and MRC for each county based on the current guidelines for cost recovery, including the type of wireless services you are providing; the jurisdictions (cities and counties) in which you provide wireless services, the wireless network service provider with which you have a reseller relationship, the number of customers or subscribers you have in New Mexico, the legal entity name, remittance name and tax number that you use to make tax remittances to the state of New Mexico; and the appropriate person within your organization and their contact information to discuss related tax items, remittances and which to address any additional questions.

D. The plan shall contain a detailed explanation of each cost item included.

E. The plan shall include a map designating the licensed area and the actual coverage area.

F. The plan shall include a sample monthly invoice from the CMRS carrier. The invoice must clearly separate MRC and NRC charges, by county. The division shall pay only the carrier. No third party agents shall be paid.

G. The plan shall be signed by an authorized official of the CMRS carrier or the third party agency and must be dated.

H. Once a CMRS carrier's plan is approved, invoices may be submitted per the guidelines.

I. Quarterly, the FCC wireless telecommunications bureau requires submission of a wireless carrier E911 deployment report. CMRS carriers

shall provide an electronic copy of the New Mexico portion of the excel spreadsheet (appendix portion) to the division within 5 days of submission to the FCC.

J. Periodically, the division may request CMRS carriers to furnish additional information for the planning, coordination and implementation of wireless enhanced 9-1-1.

K. To be considered and approved by the division, each CMRS carrier shall follow these procedures:

(1) CMRS carrier cost recovery shall initially be allowed a one-time \$0.50 per subscriber NRC and a monthly \$0.05 per subscriber MRC, based on actual deployments. In addition, one-time access costs of approximately \$450 per T-1 NRC and \$900 per T-1 MRC for trunking to connect to each access tandem shall be allowed.

(2) CMRS carriers shall submit a valid department of treasury internal revenue department form W-9 to establish vendor status and allow cost recovery remittances to be processed when invoices are received. Refer to the IRS website at <http://www.irs.gov/pub/irs-pdf/fw9.pdf> for the form.

(3) CMRS carrier invoices shall not exceed trunking cost allowances, the one-time \$0.50 NRC per subscriber, the monthly \$0.05 per subscriber MRC, based on actual deployments, and the allowed trunking NRC and MRC. Partial payment against an invoice is not allowed.

(4) CMRS carrier invoices will be processed, approved and disbursed on a monthly basis.

(5) Requests from new CMRS carriers shall be reviewed on a case-by-case basis.

[10.6.2.17 NMAC - N, xx-xx-xxxx]

HISTORY OF 10.6.2 NMAC:

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

DFA-LGD Rule No. 93-3, Enhanced 911 Rules and Regulations, filed 5-20-94.

History of Repealed Material:

10 NMAC 6.2, Enhanced 911 Requirements, filed 2/2/98 - Repealed effective 5-28-2004.

10.6.2 NMAC, Enhanced 911 Requirements, filed 5-17-2004 - Repealed effective xx-xx-xxxx.

NEW MEXICO OFFICE OF GUARDIANSHIP

NOTICE OF PUBLIC RULEMAKING HEARING

The New Mexico Developmental Disabilities Planning Council, Office of Guardianship, hereby gives notice that a public hearing will be held on **Friday, March 17, 2006 at 9:00 am in Room 148 at the Adalente Bldg., 3900 Osuna, N.E., Albuquerque, New Mexico 87109.**

The purpose of the hearing will be to receive comments on a proposed new rule relating to Guardian Services promulgated pursuant to NMSA 1978, section 28-16B-3(A).

Any person requesting a copy of the proposed rule or wishing to testify at the hearing should contact Cindy Smith at (505) 476-7321 or by mail c/o Cindy Smith, DDPC, Office of Guardianship, 810 W. San Mateo, Santa Fe, New Mexico 7505, or by e-mail at cindy.smith@state.nm.us. Any person wishing to submit written or e-mail comments may do so by submitting them to Ms. Smith before the date of the hearing. No written or e-mail comments will be accepted after 5:00 pm on the day before the date of the hearing.

Persons requiring special accommodations at the hearing are asked to contact Ms. Smith at least two days before the date of the hearing so that arrangements can be made.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, March 21, 2006, at 9:00 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM 87507. Pursuant to the New Mexico Open Meetings Act, Section 10-15-1(H)(2) NMSA 1978, a portion of the meeting may be closed to discuss a limited personnel matter. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Darlene A. Torres at 476-7902 by March 17, 2006. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the

agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The Commission of Public Records may consider the following items of rulemaking at the meeting:

A. Records Retention and Disposition Schedules

Repeal

- 1.19.2 NMAC LGRRDS, Office of the County Assessor
- 1.19.5 NMAC LGRRDS, Office of the County Sheriff

Replacements

- 1.19.2 NMAC LGRRDS, Office of the County Assessor
- 1.19.5 NMAC LGRRDS, Office of the County Sheriff

Amendments

- 1.18.630 NMAC ERRDS, Human Services Department
- 1.18.632 NMAC ERRDS, Worker's Compensation Administration

End of Notices and Proposed Rules Section

Adopted Rules

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

NOTICE OF REPEAL

The Children, Youth, and Families Department repeals and replaces its rule entitled Governing Background Checks and Employment History Verification, 8.8.3 NMAC, effective 3/31/2006.

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

**TITLE 8 SOCIAL SERVICES
CHAPTER 8 CHILDREN, YOUTH
AND FAMILIES GENERAL PROVI-
SIONS
PART 3 GOVERNING
BACKGROUND CHECKS AND
EMPLOYMENT HISTORY VERIFI-
CATION**

8.8.3.1 ISSUING AGENCY:
Children, Youth and Families Department
[8.8.3.1 NMAC - Rp, 8.8.3.1 NMAC,
03/31/06]

8.8.3.2 SCOPE: This rule has general applicability to operators, staff and employees, and prospective operators, staff and employees, of child-care facilities, including every facility or program having primary custody of children for twenty hours or more per week, juvenile treatment facilities, and direct providers of care for children in the following settings: Children's behavioral health services and licensed and registered child care, including shelter care.
[8.8.3.2 NMAC - Rp, 8.8.3.2 NMAC,
03/31/06]

8.8.3.3 STATUTORY AUTHORITY: The statutory authority for these regulations is contained in the Criminal Offender Employment Act, Section 28-2-1 to 28-2-6 NMSA and in the New Mexico Children's and Juvenile Facility Criminal Records Screening Act, Section 32A-15-1 to 32A-15-4 NMSA 1978 Amended.
[8.8.3.3 NMAC - Rp, 8.8.3.3 NMAC,
03/31/06]

8.8.3.4 DURATION:
Permanent
[8.8.3.4 NMAC - Rp, 8.8.3.4 NMAC,

03/31/06]

8.8.3.5 EFFECTIVE DATE:
March 31, 2006, unless a later date is cited at the end of a section.
[8.8.3.5 NMAC - Rp, 8.8.3.5 NMAC,
03/31/06]

8.8.3.6 OBJECTIVE:
A. The purpose of these regulations is to set out general provisions regarding background checks and employment history verification required by the children, youth and families department.

B. Background checks are conducted in order to identify information in applicants' backgrounds bearing on whether they are eligible to provide services to children.

C. Abuse and neglect screens are conducted by licensing authority staff in order to identify those persons who pose a continuing threat of abuse and/or neglect to minors or adults in their care.
[8.8.3.6 NMAC - Rp, 8.8.3.6 NMAC,
03/31/06]

8.8.3.7 DEFINITIONS:
A. **ADMINISTRATIVE REVIEW** means an informal process of reviewing a decision that may include an informal conference and/or hearing and/or a review of written records.

B. **ADMINISTRATOR** means the adult in charge of the day-to-day operation of a facility. The administrator may be the licensee or an authorized representative of the licensee.

C. **ADULT** means a person who has a chronological age of 18 years or older, except for persons under medicaid certification as set forth in Subsection I below.

D. **APPEAL** means a review of a determination made by the children, youth and families department, which may include an administrative review.

E. **APPLICANT** means any person who is required to obtain a background check under these rules and NMSA 1978, Section 32A-15-3 (1999).

F. **ARREST** means notice from a law enforcement agency about an alleged violation of law.

G. **BACKGROUND CHECK** means a screen of the department's information databases, state and federal criminal records and any other reasonably reliable information about an applicant.

H. **CARE RECIPIENT** means any person under the care of a licensee.

I. **CHILD** means a person

who has a chronological age of less than 18 years, and persons under applicable Medicaid certification up to the age of 21 years.

J. **CONDITIONAL EMPLOYMENT** means a period of employment status for a new applicant prior to the licensing authority's final disposition of the applicant's background check.

K. **CRIMINAL HISTORY** means information possessed by law enforcement agencies of an adult's arrests, indictments, or other formal charges, as well as dispositions arising from these charges.

L. **DIRECT, PHYSICAL SUPERVISION** means continuous visual contact or live video observation by a direct provider of care who has been found eligible by a background check of an applicant during periods when the applicant is in immediate physical proximity to care recipients. This requirement applies only to settings licensed by the child care services bureau or certified or licensed by the children's behavioral health and community services bureau.

M. **DIRECT PROVIDER OF CARE** means any individual who, as a result of employment or, contractual service or volunteer service has direct care responsibilities or routine and unsupervised physical access to any care recipient in the settings to which these regulations apply.

N. **EMPLOYMENT HISTORY** means a written summary of the most recent three-year period of employment with names, addresses and telephone numbers of employers, including dates of employment, stated reasons for leaving employment, and dates of all periods of unemployment with stated reasons for periods of unemployment, and verifying references.

O. **LICENSED** means authorized to operate by the children, youth and families department by issuance of an operator's license or certification certificate.

P. **LICENSEE** means the holder of, or applicant for, a license, certification, or registration pursuant to 7.20.11 NMAC, 7.20.12 NMAC, 8.16.2 NMAC, 7.8.3 NMAC; 8.17.2 NMAC.

Q. **LICENSING AUTHORITY** means the children, youth and families department.

R. **MORAL TURPITUDE** means an intentional crime that is wanton, base, vile or depraved and contrary to the accepted rules of morality and duties of a person within society. In addition, because of the high risk of injury or death created by, and the universal condemnation of the act of

driving while intoxicated, a crime of moral turpitude includes a second or subsequent conviction for driving while intoxicated regardless of degree or punishment.

S. RELEVANT CONVICTION means a plea, judgment or verdict of guilty, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in a conviction for a crime in a court of law in New Mexico or any other state. The term RELEVANT CONVICTION also includes decrees adjudicating juveniles as serious youthful offenders or youthful offenders, or convictions of children who are tried as adults for their offenses. Successful or pending completion of a conditional discharge under NMSA 1978, Section 31-20-13 (1994), or NMSA 1978, Section 30-31-28 (1972), or a comparable provision of another state's law, is not a relevant conviction for purposes of these regulations, unless or until such time as the conditional discharge is revoked or rescinded by the issuing court. The term RELEVANT CONVICTION does not include any of the foregoing if a court of competent jurisdiction has overturned the conviction or adjudicated decree and no further proceedings are pending in the case or if the applicant has received a legally effective pardon for the conviction. The burden is on the applicant to show that the applicant has successfully fulfilled the terms and conditions of any conditional discharge or consent decree, or that the relevant conviction has been overturned on appeal, or has received a legally effective pardon.

T. UNREASONABLE RISK means the quantum of risk that a reasonable person would be unwilling to take with the safety or welfare of care recipients. [8.8.3.7 NMAC - Rp, 8.8.3.7 NMAC, 03/31/06]

8.8.3.8 APPLICABILITY:

These regulations apply to all licensees and direct providers of care in the following settings:

- A. behavior management skills development;
- B. case management services;
- C. group home services;
- D. day treatment services;
- E. residential treatment services;
- F. treatment foster care services agency staff;
- G. licensed child care homes;
- H. licensed child care centers;
- I. registered child care homes;
- J. licensed shelter care;
- K. licensed before and after school care.

[8.8.3.8 NMAC - Rp, 8.8.3.8 NMAC, 03/31/06]

8.8.3.9 NON-APPLICABILITY:

A. These regulations do not apply to the following settings, except when otherwise required by applicable Certification Requirements for Child and Adolescent Mental Health Services 7.20.11 NMAC:

- (1) hospitals or infirmaries;
- (2) intermediate care facilities;
- (3) children's psychiatric centers;
- (4) home health agencies;
- (5) diagnostic and treatment centers;
- (6) unlicensed and/or unregistered child care homes

B. These regulations do not apply to the following adults:

- (1) treatment foster care parents;
- (2) relative care providers who are not otherwise required to be licensed or registered;
- (3) foster grandparent volunteers
- (4) volunteer parents of an enrolled child if the parent is under direct physical supervision;
- (5) all other volunteers at a licensed or registered facility if the volunteer spends less than six hours per week at the facility, is under direct physical supervision, and is not counted in the facility ratio.

[8.8.3.9 NMAC - Rp, 8.8.3.9 NMAC, 03/31/06]

8.8.3.10 COMPLIANCE:

A. Compliance with these regulations is a condition of licensure, registration, certification and/or renewal, and/or continuation of same.

B. The licensee is required to:

- (1) submit two completed FBI-approved fingerprint cards for all direct providers of care by the end of the next day following of commencement of service, whether employment or, contractual, or volunteer; EXCEPTION: In the case of licensed child care homes, the licensee must submit fingerprint cards, within five working days, for any adult who resides in the home or any persons residing in the home who reaches 18 years of age;
- (2) submit the FBI-approved fingerprint cards to CYFD along with the specified fee;
- (3) submit the name, address, date of birth and any aliases of the direct care provider for a child abuse and neglect screen;
- (4) verify the employment history of any potential direct provider of care; the verification shall include contacting references and prior employers/agencies to elicit information regarding the reason for leav-

ing prior employment or service; the verification shall be documented and available for review by the licensing authority; EXCEPTION: Verification of employment history is not required for registered home providers, child care homes licensed for six (6) or fewer children, or relative care providers;

(5) submit similar documentation for household members in settings in which such household members would have regular unsupervised contact with care recipients; and

(6) provide such other information department staff determines to be necessary.

C. If there is a need for any further information from an applicant at any stage of the process, the department shall request the information in writing from the applicant. If the department does not receive the requested information within fifteen calendar days of the date of the request the department shall deny the application.

[8.8.3.10 NMAC - Rp, 8.8.3.10 NMAC, 03/31/06]

8.8.3.11 COMPLIANCE EXCEPTIONS:

A. An applicant may not begin providing care prior to obtaining a background eligibility unless all of the following requirements are met:

- (1) the licensee may not be operating under a corrective action plan (child-care), sanctions, or other form of licensing disciplinary serious violations;
- (2) until receiving background eligibility the applicant shall at all times be under direct physical supervision;
- (3) by the end of the next day after the applicant begins providing care, the applicant shall send the licensing authority a completed application form and fingerprint cards;
- (4) within fifteen days after the applicant begins providing care, the applicant shall provide the licensing authority with all information necessary for the background check; and
- (5) no more than thirty (30) days shall have passed since the date of the initial application unless the department documents good cause shown for an extension.

B. If a direct provider transfers employment more than 180 days after receiving a eligibility letter from the licensing authority the direct care provider must re-comply with 8.8.3.10 NMAC. A direct care provider may transfer employment for a period of 180 days after receiving a eligibility letter from the licensing authority without complying with 8.8.3.10 NMAC only if the direct care provider submits a preliminary application that meets the following conditions:

(1) the direct provider submits a statement swearing that he or she has not committed any crimes has not been a perpetrator of abuse or neglect and has not been a respondent in a domestic violence petition;

(2) the direct care provider submits an application that describes the prior and subsequent positions with sufficient detail to allow the licensing authority to determine if further background checks or a new application is necessary; and

(3) the licensing authority determines within 15 days that the direct care provider's prior background check is sufficient for the position the direct care provider is going to take.

[8.8.3.11 NMAC - Rp, 8.8.3.11 NMAC, 03/31/06]

8.8.3.12 PROHIBITIONS:

A. Any licensee who violates these regulations is subject to revocation, suspension, sanctions, or denial of licensure, certification, or registration.

B. Licensure, certification, or registration is subject to receipt by the licensing authority of a satisfactory background check for the licensee and/or the licensee's administrator.

C. Except as provided in 8.8.3.13 NMAC below, licensure, certification or registration may not be granted by the licensing authority if a background check of the licensee and/or the licensee's administrator reveals an unreasonable risk.

D. A licensee may not retain employment, volunteer service or contract with any direct provider of care for whom a background check reveals an unreasonable risk;

E. Except as provided 8.8.3.15 NMAC below, a licensee shall be in violation of these regulations if it retains a direct provider of care for more than fifteen working days following the mailing of a notice verifying relevant convictions by the licensing authority. The notice shall be mailed or hand-delivered as evidenced by a receipt signed by the recipient. EXCEPTION: in emergency situations the department shall deliver one copy to the facility by facsimile transmission or hand delivery and one copy to the appropriate licensing staff at the department.

F. A licensee shall be in violation of these regulations if it retains any direct provider of care inconsistent with Subsection A of 8.8.3.11 NMAC;

G. A licensee shall be in violation of these regulations if it hires, contracts with, uses in volunteer service, or retains any direct provider of care for whom information received from any source including the direct provider of care, indicates the provider of care poses an unreasonable risk to the department or to care

recipients.

H. Any firm, person, corporation, individual or other entity that violates this section shall be subject to appropriate disciplinary action up to and including immediate emergency revocation of license or registration pursuant to the regulations applicable to that entity.

[8.8.3.12 NMAC - Rp, 8.8.3.12 NMAC, 03/31/06]

8.8.3.13 ARRESTS, CONVICTIONS AND REFERRALS:

A. For the purpose of these regulations, the following information shall result in a conclusion that the applicant is an unreasonable risk.

(1) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction directly relates to whether the applicant can provide a safe, responsible and morally positive setting for care recipients;

(2) a conviction for a felony or a misdemeanor involving moral turpitude and the criminal conviction does not directly relate to whether the applicant can provide a safe, responsible and morally positive setting for care recipients if the department determines that the applicant so convicted has not been sufficiently rehabilitated;

(3) a conviction, regardless of the degree of the crime or the date of the conviction, of trafficking in controlled substances, criminal sexual penetration or related sexual offenses or child abuse; or

(4) a substantiated referral, regardless of the date, for sexual abuse or for neglect characterized by a failure to protect against sexual abuse.

B. A disqualifying conviction may be proven by:

(1) a copy of the judgment of conviction from the court;

(2) a copy of a plea agreement filed in court in which a defendant admits guilt;

(3) a copy of a report from the federal bureau of investigation, criminal information services division, or the national criminal information center, indicating a conviction;

(4) a copy of a report from the state of New Mexico, department of public safety, or any other agency of any state or the federal government indicating a conviction;

(5) any writing by the applicant indicating that such person has been convicted of the disqualifying offense, provided, however, that if this is the sole basis for denial, the applicant shall be given an opportunity to show that the applicant has successfully completed a conditional discharge for the disqualifying conviction.

C. If a background check

shows pending charges for a felony offense, any misdemeanor offense involving domestic violence or child abuse, an arrest but no disposition for any such crime, or a pending referral with the department, there shall be a determination of unreasonable risk. An arrest for any felony offense or for any misdemeanor offense involving domestic violence or child abuse shall result in the immediate suspension of the applicant's background check status until such time as the charges are disposed of. It is the duty of the administrator of a facility or the licensee, upon learning of any such arrest, to notify the licensing authority immediately. A suspension of background check status shall have the same effect as a determination of unreasonable risk until the charges are disposed of. If an arrest results in a conviction, the applicant shall be subject to all applicable criminal records check provisions and may be determined to be an unreasonable risk. If an arrest results in an acquittal, conditional discharge, or dismissal of the charges, or any other disposition that is not a criminal conviction, the applicant may thereafter again be considered for a determination that the applicant is eligible.

D. If a background check shows that an applicant is wanted for any offense by any law enforcement agency due to a warrant having been issued, or if the applicant is shown to have failed to appear for any pending criminal court proceeding, there shall be a determination of unreasonable risk. If such information shall be reported to the licensing authority after an initial determination that the applicant is eligible, the applicant's background check status shall be suspended until such time as the matter is disposed of. If the case results in a conviction, the applicant shall be subject to all of the background check provisions set forth in Subsections A, B, and C above. For the purposes of this section a second conviction for driving while intoxicated, or any crime the elements of which are substantially the same as driving while intoxicated, shall be considered a crime of moral turpitude. The record name of the second conviction shall not be controlling; any conviction subsequent to an initial one may be considered a second conviction.

[8.8.3.13 NMAC - Rp, 8.8.3.13 NMAC, 03/31/06]

8.8.3.14 UNREASONABLE RISK:

A. The department may, in its discretion, weigh the evidence about an applicant to determine whether the applicant poses an unreasonable risk to the department or care recipients. The department may also consult with staff legal, treatment, assessment or other professionals in the process of determining whether the

cumulative weight of credible evidence establishes unreasonable risk.

B. In making this determination the department need not limit its reliance on formal convictions or substantiated referrals, but nonetheless must only rely on evidence with indicia of reliability such as:

(1) reliable disclosures by the applicant or a victim of abuse or neglect;

(2) domestic violence orders that allowed an applicant notice and opportunity to be heard and that prohibits or prohibited them from injuring, harassing or contacting another;

(3) child or adult protection investigative evidence that indicates a likelihood that an applicant engaged in inappropriate conduct but there were reasons other than the credibility of the evidence to not substantiate; or

(4) any other evidence with similar indicia of reliability.

[8.8.3.14 NMAC - N, 03/31/06]

8.8.3.15 REHABILITATION

PETITION: Any applicant whom the department concludes is an unreasonable risk on any basis other than those described at Paragraphs (3) or (4) of Subsection A of 8.8.3.13 NMAC, may submit to the department a rehabilitation petition describing with specificity all information that tends to demonstrate that the applicant is not an unreasonable risk. The petition may include, but need not be limited to, a description of what actions the applicant has taken subsequent to any events revealed by the background check to reduce the risk that the same or a similar circumstance will recur.

[8.8.3.15 NMAC - N, 03/31/06]

8.8.3.16 APPEAL RIGHTS:

A. Any licensee who is denied licensure, certification, or registration or is sanctioned pursuant to these regulations may appeal that decision to the children, youth and families department. If a licensee alleges facts in good faith that demonstrate a conclusion of unreasonable risk will substantially affect a present vested right such as current employment or other similar currently vested rights the licensee shall be entitled to a hearing. The request for appeal shall be in writing and the party requesting the appeal shall cause the department to receive it within fifteen days of the date of the department's written notice of a determination of unreasonable risk.

B. Any direct provider of care who is found ineligible after completion of background check may request a hearing from the children, youth and families department. The request for hearing shall be in writing and the party requesting

the appeal shall cause the department to receive it within fifteen days of the date of the department's written notice of a determination of unreasonable risk.

C. The appeal that is the administrative review under this section shall be completed by a review of the record by a hearing officer designated by the cabinet secretary. The hearing officer's review is limited to: (1) whether the licensing authority's conclusion of unreasonable risk is supported by any section of these regulations; and (2) whether the applicant has been erroneously identified as a person with a relevant conviction or substantiated referral. The review will be completed on the record presented to the hearing officer. The written statement and relevant evidence are considered by the hearing officer. The hearing officer submits a recommendation to the cabinet secretary on the appeal as soon as reasonably practicable. The appeal that is a hearing under this section shall be pursuant to the department's administrative hearing regulations at 8.8.4 NMAC.

[8.8.3.16 NMAC - Rp, 8.8.3.15 NMAC 03/31/06]

HISTORY OF 8.8.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

HED 85-6 (HSD), Regulations Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, 8/30/85.

History of Repealed Material:

HED 85-6 (HSD), Regulations Governing Criminal Records Check and Employment History of Licensees and Staff of Child Care Facilities, filed - Repealed 7/30/2001. 8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification, filed 7/30/2001 - Repealed effective 3/29/2002.

8.8.3 NMAC, Governing Criminal Records Checks and Employment History Verification, filed 3/15/2002 - Repealed effective 10/30/03.

8.8.3 NMAC, Governing Background Checks and Employment History Verification, filed 10/16/2003 - Repealed effective 3/31/2006.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

5.5.50 NMAC, Industrial Development Training Program, filed April 16, 2002 is repealed and replaced by 5.5.50 NMAC, Industrial Development Training Program, effective March 15, 2006.

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION

CHAPTER 5 POST-SECONDARY EDUCATION PROGRAMS

PART 50 INDUSTRIAL DEVELOPMENT TRAINING PROGRAM

5.5.50.1 ISSUING AGENCY:

Economic Development Department
[5.5.50.1 NMAC - Rp, 5.5.50.1 NMAC, 03-15-2006]

5.5.50.2 SCOPE: The rules apply to New Mexico residents.

[5.5.50.2 NMAC - Rp, 5.5.50.2 NMAC, 03-15-2006]

5.5.50.3 STATUTORY AUTHORITY:

General management of the industrial development training program shall be the responsibility of the industrial training board as prescribed by governing legislation (Section 21-19-7, NMSA 1978).
[5.5.50.3 NMAC - Rp, 5.5.50.3 NMAC, 03-15-2006]

5.5.50.4 DURATION: Permanent

[5.5.50.4 NMAC - Rp, 5.5.50.4 NMAC, 03-15-2006]

5.5.50.5 EFFECTIVE DATE:

March 15, 2006, unless a later date is cited at the end of a section.

[5.5.50.5 NMAC - Rp, 5.5.50.5 NMAC, 03-15-2006]

5.5.50.6 OBJECTIVE:

The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the Industrial Training Development Program or "in plant training," strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. Since the program's inception in 1972, more than 600 companies and 35,000 New Mexico workers have benefited from the program. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves. Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference

can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).

A. Company eligibility:

Three categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. To be considered for JTIP, non-retail service companies must export a service rather than import a customer. The third category – film production companies – are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. For a more complete explanation of expansion requirements, refer to “company qualifications and requirements” in 5.5.50.8 NMAC. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP participants.

B. Job eligibility: Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to 10% of the total number of jobs applied for in the proposal. Jobs must also meet a wage requirement to be eligible for funding. The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit. An additional incentive is offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

C. Trainee eligibility: To be eligible for JTIP, trainees must be new hires to the company, must have been residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, and must be of legal status for employment.

Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

D. Reimbursable training costs: Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide “quick response” training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A significant portion of trainee wages (50% - 65% for up to six months of initial training).

(b) Cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses (50% - 65%) with a cap of 5% of total funding for wages.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are eligible for an additional 5% wage reimbursement above the standard rates.

(3) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

E. Program management and administration: General management of the Job Training Incentive Program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program’s management and operation. The board has adopted this policy manual to ensure the program supports the development of New Mexico’s economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the Job Training Incentive Program is the responsibility of the JTIP staff in the New Mexico economic development department. One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-

15-2006]

5.5.50.7 DEFINITIONS:
[RESERVED]

5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:

A. Company qualifications and requirements: The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. The second is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service rather than import a customer. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. JTIP will not consider contractors which rely on income that is already in the state of New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, or telemarketing are not eligible for JTIP funds. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). A company whose employees are compensated solely on piecework is also not eligible. The board uses the north American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Start-up companies are also eligible. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants, eligibility as an expanding company is determined by peak employment over the three prior years. The company must meet or exceed the average employ-

ment level for the past three years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program previously, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials may submit a business plan, evidence of signed contracts, and/or pro forma financial statements which would substantiate their business expansion.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of Interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

B. Position qualifications and requirements: The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These lev-

els are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created positions may be funded up to a maximum of 10% of the total number of jobs for which funding is requested.

C. Trainee qualifications and requirements: The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within four months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the program. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees hired after April 8, 2005 must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or Industrial Development Training Program are not eligible to participate again with the same company.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications will remain fixed during the program unless otherwise amended and approved by the JTIP board.

(8) Trainees' start dates should occur after the actual contract date. Trainees hired before the contract date only qualify for reimbursed wages if they were hired less than two months before the board meeting at which the company is seeking funding. Funding for trainees hired before the contract date is limited to hours worked after the contract begins. The number of hours worked before the contract date will be subtracted from the total number allowed for the position. The number of trainees hired before the board meeting may not exceed 25% of the number for which funding is requested.

(9) Employees hired through a

temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a permanent full-time employee before the end of the JTIP approved training hours.

(b) The trainee must receive the same wages and major medical, dental, and vision benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006]

5.5.50.9 ELIGIBLE TRAINING PROGRAMS:

A. The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

B. The types of training projects eligible under the Job Training Incentive Program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

C. On-the-job training: Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) and/or "hands-on" skill development. Although certain modules may be conducted in a

classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O*NET job description, and training units. Each unit will include core content and/or objectives, methods and materials, and requested hours. A more detailed description of the training plan requirements is included in the *JTIP proposal guide*.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation. Please refer to the sample contract in the appendix.

D. Custom training provided by a New Mexico post-secondary public educational institution: Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP participants are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution and/or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Tuition reimbursement is not eligible for JTIP funding.

(5) Facilities rental outside a public educational institution and equipment rental and/or purchase are not eligible for

JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation. [5.5.50.9 NMAC - N, 03-15-2006]

5.5.50.10 REIMBURSABLE EXPENSES:

A. The following expenses are eligible for reimbursement through JTIP.

(1) A significant percentage of trainee wages (50% - 70% for up to six months of initial training).

(2) A percentage of travel expenses associated with training (50% - 65%).

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution.

B. Standard reimbursement rates for wages and travel range from 50% to 65%. Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit are also eligible for an additional 5% wage reimbursement. If a company is participating in other job reimbursement training programs such as the Workforce Investment Act (WIA), the combined reimbursement to the company may not exceed 100%.

C. The Job Training Incentive Program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position and complete training before the contract end date, a claim can be submitted for the successful trainee.

D. Wage reimbursement:

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of reimbursement ranges from 50% to 65%, depending on the business location. An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O*NET (occupational information network) job zone classification for the O*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O*NET system, sponsored by the US department of labor, is available at <http://onetcenter.org>. Each job in the O*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recom-

mended hours is included in the table below.

[Please see Table on page 282]

General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	320	7.00	6.00	40	8
2	Some preparation needed	4.0 to < 6.0	640	9.00	7.00	80	16
3	Medium preparation	6.0 to < 7.0	960	12.00	9.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	16.00	11.50	130	26
	Align with HWJTC	Additional 5%	1040	19.25	13.50	130	26

(3) The JTIP board will ensure that the O*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board awards training hours based on the O*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at 50% for all eligible training hours. Urban communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203).

(b) Companies located in rural areas are reimbursed at 60% for all eligible training hours.

(c) Companies located in an economically distressed area in New Mexico are eligible for 65% reimbursement. To receive a 65% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(d) Companies located on Native American reservations are eligible for 65% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit are eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area. Reimbursement for positions which meet these requirements is 55% in an urban location, 65% in a rural location, and 70% in an economically distressed area. Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIA, the combined reimbursement to the company may not exceed 100%.

E. Reimbursement for classroom training: Payment for classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is 100%. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. *No training equipment may be purchased or rented using JTIP funds.*

F. Travel cost and per diem reimbursement for trainees and trainers: Trainee travel and per diem may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel and per diem will be consistent with the rates as designated by location (50% for urban, 60% for rural, and 65% for economically distressed areas). Travel and per diem must be pursuant to the DFA rule 95-1 of the department of finance and administration's regulations governing the Per Diem and Mileage Act. Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006]

5.5.50.11 REQUIREMENTS FOR FUNDING REQUEST:

A. A company must submit a written proposal to the JTIP staff one month before the board meeting to be considered for funding. Information and documentation which must be included in the proposal is explained in detail in the *JTIP proposal guide*, which describes the requirements for initial applications for funding and for companies which are submitting subsequent requests. The proposal is an important document not only in establishing the company's eligibility for JTIP funding, but also its viability as a business and the relationship of the newly created jobs to business expansion. A detailed training plan is required to ensure the success of the trainees, the train-

ing program, and ultimately the business.

B. The board considers a number of factors when evaluating proposals. These include:

(1) being a corporate or regional headquarter facility.

(2) quality of jobs with respect to wages and benefits; companies are encouraged to pay at levels which qualify for the high wage job tax credit (\$40,000 in urban locations and \$28,000 in other locations);

(3) return on investment, including impact on local and state economies; factors include number of jobs, impact on average wage and household earnings; increase in per capita income; annual local purchases impacting local/state sales taxes; dollar amount of new construction; environmental impact; and overall economic support to the community;

(4) the company's financial strength should indicate a capacity for long-term employment for JTIP participants;

(5) charitable and community contributions.

[5.5.50.11 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006]

5.5.50.12 PROCEDURAL

OVERVIEW: The procedure for completing a funding proposal is explained in detail in the *JTIP proposal guide*. The procedure for program participation once funding is approved is described in the *JTIP program guide*. This summary is intended to provide a general overview of the process. Please refer to the appropriate guide when completing a proposal for funding and administering the program once it is funded. JTIP staff is available for assistance with these processes.

A. Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than one month before the JTIP board meeting at which the proposal will be considered for funding. Early submission is required to allow JTIP staff and board members to review the materials and request clarification or additional information if needed. Ten copies of the proposal will be requested once the proposal has been reviewed by staff and refined, if necessary.

B. Board meetings are generally held on the second Friday of each month. The alternate date, which is used when a meeting on the second Friday is not viable (a quorum cannot be achieved, holiday, etc.) is the third Friday of the month.

C. The contract start date is the date of the board meeting at which funding was approved. The contract end date is one year after the start date. All claims for reimbursement must be submitted and the final audit must be completed before the contract end date.

D. The contractual agreement will be prepared and mailed out to the company within 15 working days after the board approval date. A sample contract is included as an appendix to this manual. Companies are encouraged to review the contract before applying for funding, as the contract cannot be edited.

E. The company must return the signed contractual agreement to the economic development department within 15 business days from the issue date.

F. Eligible job openings must be registered with the New Mexico department of labor. The company is also encouraged to advertise through the placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is available from the New Mexico higher education department (<http://hed.state.nm.us>).

G. The company must hire trainees within four months of the contract start date. This timing ensures that trainees who are eligible for six months of training will complete the program before the contract end date and allows time for the final audit.

H. The company must provide the JTIP staff with a schedule of new hires at the end of the four-month hiring period. When the company submits the list, the allocation of funds for their contract will be adjusted to reflect the number of people hired.

I. Claims for reimbursement should be submitted as each participant completes training.

J. Each project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys.

K. The company must arrange for a final audit by an independent accounting firm registered with the New Mexico regulation and licensing department, board of accountancy. A list of approved auditors is available from JTIP staff or from (www.saonm.org). A specific amount for the audit is included as part of the proposal approval. Any amount in excess of this amount is the responsibility of the company. The audit must be completed before the end of the contract. Companies should keep this deadline in mind when selecting an auditor.

L. All claims for reimbursement must be submitted and the final audit must be completed before the contract end date. The final claim for reimbursement should be submitted with the completed final audit. The final claim will be paid once the final audit has been received and approved favorably.

M. Yearly follow-ups are conducted to show effectiveness of the pro-

gram, including surveys to address retention rates of program participants.

N. Companies that fail to comply with all established operating requirements and closeout procedures are not eligible to apply for future participation in JTIP.

[5.5.50.12 NMAC - N, 03-15-2006]

5.5.50.13 AMENDMENTS AND EXTENSIONS:

A. Amendments to the contract may be allowed in special circumstances. Amendments may be required by administrative changes (such as job classification changes, company name change, time extension, etc.) and changes to the number of participants funded. Companies must submit an amendment request, along with supporting documentation to justify the amendment to the job training incentive program board. All amendment requests must include 1) a letter describing the change requested and the reason for the change, 2) a completed amendment form, and in some cases a current financial statement. A copy of the amendment form is included in the *JTIP program guide*. If a company requests an amendment increasing the original contract by more than 20%, a new proposal must be submitted.

B. Amendment requests which are administrative in nature and do not impact the original budget amount by more than \$5,000 (above or below) may be executed by JTIP staff. Examples include job classification changes, company name change, wage ranges, and time extensions to the contract. Staff may execute amendments without board approval to allow completion of the training. The program manager and division director or his/her designee will approve all staff executed contract changes. Otherwise, the JTIP board must approve all contract amendments.

C. All project amendment requests must be submitted in writing one month prior to the board meeting. The board meetings are held on the second Friday of every month, with the third Friday occasionally used as an alternate. Amendments must begin within thirty days from the approval date.

[5.5.50.13 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006]

5.5.50.14 CONTACTING JTIP

STAFF: JTIP staff can be contacted at the New Mexico economic development department in Santa Fe. The general phone numbers for the department are (505) 827-0300 or (800) 374-3061.

A. The mailing address for all JTIP reimbursement forms is: Job Training Incentive Program

Program Administrator
New Mexico Economic Development
Department
P. O. Box 20003
Santa Fe, NM 87504-5003

B. The physical address to be used for federal express or special handling packages is:

Job Training Incentive Program
Program Administrator
New Mexico Economic Development
Department
Joseph M. Montoya Bldg.
1100 St. Francis Drive
Santa Fe, NM 87505-4147
[5.5.50.14 NMAC - Rp, 5.5.50.11 NMAC,
03-15-2006]

5.5.50.15 GLOSSARY:

A. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for 65% reimbursement. To receive a 65% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

B. Expanding company: An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the three prior years. (Refer to "peak employment.")

C. High wage job tax credit: The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2009, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

D. Manufacturing: Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location

approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

E. NAICS: North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at www.census.gov/epcd/naics02/naicod02.htm.

F. Native American crafts: Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

G. New company: A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

H. Non-retail service sector business: To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

I. O*NET: The occupational information network - O*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O*NET. The O*NET database is available at www.onetcenter.org.

J. Peak employment: First Time JTIP Applicants: Peak employment will be based on the employment aver-

age from three previous years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

K. Peak employment: Previous JTIP Participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last three years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

L. Retail trade: Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

M. Southwestern arts and crafts: Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

N. Urban communities: An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (448,607), Las Cruces (74,267), Rio Rancho (51,765), Roswell (45,293), and Santa Fe (62,203). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

[5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC,
03-15-2006]

HISTORY OF 5.5.50 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

5 NMAC 5.50, Industrial Development Training Program, filed 11-01-1999 - Repealed effective 04-30-2002.

5.5.50 NMAC, Industrial Development Training Program - filed 04-16-2002 - Repealed effective 03-15-2006.

**NEW MEXICO
DEPARTMENT OF HEALTH**

This is an amendment to 7.7.2 NMAC Sections 7, 8, 18, 19, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 effective 3/15/06. This rule has also been renumbered and reformatted to comply with current NMAC requirements.

7.7.2.7 DEFINITIONS.

A. "Abuse" means injury, sexual misuse, or neglect resulting in harm of an individual patient.

B. "Acute-care hospital" means a hospital providing emergency services, in-patient medical and nursing care for acute illness, injury, surgery or obstetrics; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care hospitals.

C. "Allied health personnel" means persons who are not physicians, podiatrists, psychologists or dentists who may be admitted to practice in the hospital through the medical staff credentialing process, and includes:

(1) **"licensed independent practitioner"** means an advanced practice professional registered nurse permitted by law to provide care without direction or supervision within the scope of the individual's license and consistent with individually granted privileges; this includes certified nurse midwives, certified nurse practitioners and clinical nurse specialists;

(2) **"certified registered nurse anesthetist"** means an advanced practice professional registered nurse permitted by law to provide anesthesia care; in an interdependent role as a member of a health care team in which medical care of the patient is directed by a medical physician, osteopathic physician, dentist or podiatrist licensed in the state of New Mexico; the certified registered nurse anesthetist shall collaborate with the medical physician, osteopathic physician, dentist or podiatrist concerning the anesthesia care of the patient; collaboration means the process in which each health care provider contributes their respective expertise;

(3) **"physician assistant"** means a person licensed as a physician assistant by the New Mexico board of medical examiners, pursuant to Section 61-6-6, NMSA 1978.

D. "Amended license" means a change of administrator, name, location, capacity, classification of any units as listed in these requirements requires a new license:

(1) the application shall be on a form provided by the licensing authority;

(2) the application shall be accompanied by the required fee for an

amended license; and

(3) the application shall be submitted at least 10 working days prior to the change.

[D.]E. "Annual net revenue" means, as determined from the hospitals governing board's approved audited financial statement for an annual time period, the hospital's net patient services revenue; net patient services revenue does not include net operating revenue from other sources, such as medical office rental and cafeteria; annual net revenue is determined after deductions for:

(1) contractual allowances;

(2) uncompensated care and bad debt;

(3) charity care; and

(4) annual net revenue excludes

other non-operating revenues, including but not limited to, income from endowments, investments, gifts and bequests, and net gain on sale of fixed assets.

[E.]E. "Annual cost of care" means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), the billed charges of providing emergency services and general health care to nonpaying patients and low-income reimbursed patients.

G. "Annual license" means a license issued for a one-year period to a hospital that has met all license prior to the initial state licensing survey, or when the licensing authority finds partial compliance with these requirements.

[F.]H. "Applicant" means the individual who, or organization which, applies for a license; if the applicant is an organization, then the individual signing the application on behalf of the organization must have the authority to sign for the organization.

[G.]L. "Audiologist" means a person licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978, to practice audiology.

[H.]J. "Automated medication management system" means an automatic device that compounds, measures, counts, packages and delivers a specified quantity of dosage units for a designated product and which collects, controls and maintains all transaction information.

[I.]K. "CMS" means center for medicare & medicaid services.

[J.]L. "Consultant pharmacist" means a person licensed in New Mexico under the Pharmacy Act, Section 61-11-2 (D), NMSA 1978, as a consultant pharmacist.

[K.]M. "Critical access hospital" means a hospital with special characteristics, duly certified as such by centers for medicare and medicaid services (CMS)

and is in compliance with the conditions of participation for such facilities; such critical access hospitals are deemed as meeting the intent of these requirements and may be licensed accordingly by the licensing authority.

[L.]N. "Dentist" means a person licensed to practice dentistry under the Dental Act, Sections 61-5-1 to 61-5-22, NMSA 1978.

[M.]O. "Department" means the New Mexico department of health.

[N.]P. "Dietician" means a person who is eligible for registration as a dietitian by the commission on dietetic registration of the American dietetic association, or who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management.

[O.]Q. "Dietetic service supervisor" means a person who:

(1) is a qualified dietitian with one year of supervisory experience in the dietetic service of a health care institution; or

(2) is a graduate of a dietetic technician or dietetic assistant training program, approved by the American dietetic association and has consultation from a qualified dietitian; or

(3) is a graduate of a state-approved course that provided 90 or more hours of classroom instruction in food service supervision and has experience as a supervisor in a health care institution with consultation from a dietitian; if the supervisor is not a qualified dietitian then consultation from a qualified dietician must be provided.

[P.]R. "Distinct emergency service" means an emergency distinct department that provides a medical screening examination and treatment of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain, psychiatric disturbances or symptoms of substance abuse) that requires immediate medical attention.

S. "Drill" means the practice of a planned activity at full dress intensity.

[Q.]T. "Emergency care for sexual assault survivors" means medical examinations, procedures and services provided by a hospital to a sexual assault survivor following an alleged sexual assault.

[R.]U. "Emergency contraception" means a drug approved by the federal food and drug administration that prevents pregnancy after sexual intercourse.

[S.]V. "Emotional abuse" means verbal behavior, harassment, or other actions that result in emotional or behavioral problems, physical manifestations, disordered or delayed development.

W. "Exercise" means the

practice of a planned activity at less than full-dress intensity.

[F-X]. “Financial interest” means any equity, security, lease or debt interest in the hospital; financial interest also includes any equity, security, and lease or debt interest in any real property used by the hospital or in any entity that receives compensation arising from the use real property by the hospital.

[U-Y]. “Health physicist” means a person holding a master’s degree or doctorate in an appropriate discipline of radiologic physics or who has equivalent education and experience.

[V-Z]. “Hospital” means a facility offering in-patient services, nursing, overnight care on a 24-hour basis for diagnosing, treating, and providing medical, psychological or surgical care for three or more separate individuals who have a physical or mental illness, disease, injury, a rehabilitative condition or are pregnant; use of the term “hospital” for any facility not duly licensed according to these requirements is prohibited; any acute care hospital shall have emergency services, inpatient medical and nursing care for acute illness, injury and surgery; ancillary services such as pharmacy, clinical laboratory, radiology, and dietary are required for acute-care or limited service hospitals.

[W-AA]. “Long term acute-care hospital” means a hospital providing long term, in-patient medical care for medically-complex patients whose length of stay averages greater than 25 days; ancillary support services such as pharmacy, clinical laboratory, radiology, and dietary are required for long-term acute-care hospitals.

[X-BB]. “Low income patient” means a patient whose family or household income does not exceed two hundred percent of the most current federal poverty level.

[Y-CC]. “Rehabilitation hospital” means a special hospital that primarily provides rehabilitative care to inpatients.

[Z-DD]. “Legally authorized person” means a parent of a minor, a court appointed guardian or a person authorized by the patient in accordance with law to act on the patient’s behalf.

[AA-EE]. “Licensed practical nurse” means a person licensed as a practical nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

[AB-FF]. “Licensee” means the person(s) who, or organization which, has an ownership, leasehold, or similar interest in the hospital and in whose name a license has been issued and who is legally responsi-

ble for compliance with these requirements.

[AC-GG]. “Licensing authority” means the agency within the department vested with the authority to enforce these requirements.

[AD-HH]. “Limited services hospital” means a hospital that limits admissions according to medical or surgical specialty, type of disease or medical condition, or a hospital that limits its inpatient hospital services to surgical services or invasive diagnostic treatment procedures; a limited services hospital must have emergency services, inpatient medical and nursing care for acute illness, injury, and surgery, and must offer ancillary services including pharmacy, clinical laboratory, radiology, and dietary; a limited services hospital does not include:

(1) a hospital licensed by the department as a special hospital;

(2) an eleemosynary hospital that does not bill patients for the services provided; and

(3) a hospital that has been granted a license prior to January 1, 2003.

[AE-II]. “Local community” means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), the New Mexico standard metropolitan statistical area or county in which a limited services hospital or an acute-care hospital applies to be licensed or becomes initially licensed by the department at any time after January 1, 2003; if the applicant seeks licensure of a facility within the boundaries of a New Mexico standard metropolitan statistical area, the local community for purposes of that application is that standard metropolitan statistical area; if the applicant seeks licensure of a facility not within the boundaries of a New Mexico standard metropolitan statistical area, the local community for purposes of that application is the New Mexico county.

[JJ]. “Local emergency operations plan” means the all-hazard emergency operations plan maintained by a jurisdiction at the local level that coordinates local level functional plans, hazard specific plans, and response specific plans into an effective and efficient whole.

[AF-KK]. “Medically and factually accurate and objective” means verified or supported by the weight of research conducted in compliance with accepted scientific methods and standards; published in peer-reviewed journals; and recognized as accurate and objective by leading professional organizations and agencies with relevant expertise in the field of obstetrics and gynecology, such as the American college of obstetricians and gynecologists.

[AG-LL]. “Medical staff” means the hospital’s organized component of physicians, podiatrists, psychologists, dentists and allied health personnel who have

been appointed by the governing body of the hospital and granted specific privileges for the purpose of providing care for the patients of the hospital.

[AH-MM]. “Misappropriation of property” means the deliberate misplacement, misappropriation of patients’ property, or wrongful, temporary or permanent use of a patient’s belongings or money without the patients’ consent.

[NN]. “National incident management system” means the core set of doctrine, concepts, principles, terminology, and organizational processes, required by homeland security presidential directive 5, that will be used to manage domestic incidents to enable effective, efficient, and collaborative action at all levels.

[OO]. “National response plan” means the single all-hazard incident management plan, required by homeland security presidential directive 5, that addresses the five domains of disaster and emergency management: awareness, prevention, preparedness, response, and recovery and that will govern all disaster and emergency management planning beginning in federal fiscal year 2005 (October 1, 2004-September 30, 2005).

[AI-PP]. “Neglect” means the failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

[OO]. “New Mexico state all-hazard emergency operations plan” means the all-hazard emergency operations plan maintained by the state of New Mexico that coordinates state level functional plans, hazard specific plans, and response specific plans with local emergency operations plans into an effective an efficient whole.

[AJ-RR]. “Nonpaying patients” means with respect to the requirements of Section 24-1-5.8 NMSA 1978 (2003), patients whose care is substantially uncompensated, including patients classified as charity care or bad debit.

[AK-SS]. “Nosocomial” means an infection pertaining to or originating in a hospital not present or incubating prior to admittance to a hospital.

[AL-TT]. “Occupational therapist” means a person licensed as an occupational therapist under the Occupational Therapy Act, Sections 61-12A-1 to 61-12A-20, NMSA 1978.

[AM-UU]. “Pharmacist” means a person licensed in New Mexico under the Pharmacy Act, 61-11-1 to 61-11-29, NMSA 1978.

[AN-VV]. “Pharmacy” means a place where drugs are compounded or dispensed that is licensed by the New Mexico board of pharmacy.

[AO-WW]. “Physical abuse” means damaging or potentially damaging acts or incidents that result in

bodily injury or death.

[AP.]XX. "Physical therapist" means a person licensed to practice physical therapy under the Physical Therapy Act, Sections 61-12-1 to 61-12-21, NMSA 1978.

[AQ.]YY. "Physician" means a person licensed to practice medicine or osteopathy by the New Mexico board of medical examiners, pursuant to Section 61-6-10, NMSA 1978 or the osteopathic medical examiners board pursuant to Sections 61-10-1 through 61-10-21, NMSA 1978.

[AR.]ZZ. "Physician owner" means a physician, podiatrist, dentist licensed by the New Mexico board of dental health care pursuant to Section 61-5A-12 NMSA 1978, or any other person licensed in New Mexico as a health care practitioner permitted by the hospital to refer, admit or treat hospital patients, and who has a financial interest in the hospital.

[AS.]AAA. "Podiatrist" means a person licensed to practice podiatry or podiatric medicine and surgery under the Podiatry Act, Sections 61-8-1 to 61-8-16, NMSA 1978.

[AF.]BBB. "Privileges" means the authorization of the medical staff members to provide care to hospital patients in the area in which the person has expertise as a result of education, training and experience.

[AU.]CCC. "Psychologist" means a person licensed to practice psychology under the Professional Psychologists' Act, Sections 61-9-1 through 61-9-18, NMSA 1978.

[AV.]DDD. "Psychiatric hospital" means a special hospital that primarily provides by or under the supervision of a physician, psychological and/or psychiatric services for the diagnosis and treatment of mentally ill persons.

[AW.]EEE. "Registered nurse" means a person licensed as a professional registered nurse under the Nursing Practice Act, Sections 61-3-1 through 61-3-30, NMSA 1978.

[AX.]FFF. "Reporting year" means with respect to the provision of financial, utilization, and services information for the hospital's last full and audited annual accounting period.

[AY.]GGG. "Respiratory care practitioner" means a person who is licensed under the Respiratory Care Act, Sections 61-12B-1 to 61-12B-16, NMSA 1978.

[AZ.]HHH. "Sexual assault" means the crime of criminal sexual penetration that may result in pregnancy.

[BA.]III. "Sexual assault survivor" means a person who alleges or is alleged to have been sexually assaulted and who presents as a patient to a hospital.

[BB.]JJJ. "Special hospital" means a hospital that treats patients that have a diagnosis-related group classifications for two-thirds of all its patients that fall into no more than two major diagnosis categories, or if at least two-thirds of its patients are classified in a specific diagnosis category; an example of a special hospital is a psychiatric or rehabilitation hospital.

[BC.]KKK. "Speech pathologist" means a person who is licensed under the Speech-Language Pathology and Audiology Act, Sections 61-14B-1 to 61-14B-16, NMSA 1978 to practice speech language pathology.

[BD.]LLL. "Variance" means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements for an unspecified period of time where the granting of a variance will not create a danger to the health, safety, or welfare of parents or staff of a hospital and is at the sole discretion of the licensing authority.

[BE.]MMM. "Waive/waiver" means an act on the part of the licensing authority to refrain from enforcing compliance with a portion or portions of these requirements for a limited period of time less than one year, provided the health, safety, or welfare of patients and staff are not in danger; waivers are issued at the sole discretion of the licensing authority.

[7.7.2.7 NMAC - Rp, 7.7.2.7 NMAC, 06-15-04; A, 03-15-06]

7.7.2.8 REQUIRED LICENSURE BY THE DEPARTMENT: Procedures applicable after January 1, 2003: This section addresses the requirements of Section 24-1-5.8 NMSA 1978 (2003) and applies to local communities in which an acute-care hospital or a limited services hospital applies to be licensed or becomes initially licensed by the department at any time after January 1, 2003.

A. No hospital may operate in New Mexico unless it is licensed in accordance with the requirements of the New Mexico department of health.

B. The department shall issue a license to an acute-care hospital or a limited services hospital that meets the requirements of this rule and agrees to:

(1) continuously maintain and operate an emergency department that provides emergency medical services as defined in ~~Section NMAC 7.7.2.37~~ Section 7.7.2.38 NMAC; and

(2) when applicable, participate in the medicare, medicaid and county indigent care programs; and

(3) require a physician owner to disclose and document in the patient's med-

ical record a financial interest in the hospital before referring a patient to the hospital.

C. Comply with the same quality standards applied to other hospitals.

D. Provide emergency services and general health care to a number of nonpaying patients and low-income reimbursed patients in the same proportion as the patients that are treated in acute-care hospitals in the local community, as determined by the department provided that the annual cost of the care required to be provided pursuant to paragraph (5) shall not exceed an amount equal to five percent of the hospital's annual net revenue for the previous fiscal year from audited financial statements.

E. Require a health care provider to disclose a financial interest before referring a patient to the hospital.

F. Reporting Requirements-General. The department, in accordance with the requirements of Section 24-1-5.8 NMSA 1978 (2003) requires the provision of information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the hospital's last full and audited accounting period. This period is called the most recent reporting year.

G. Reporting Hospitals. After January 1, 2003, an application to the department for an initial license by an acute-care hospital or limited services hospital in a local community will require the provision of information necessary to determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the most current reporting year. The following hospitals must report to the department within 30 days of notice from the department of application for an initial license by an acute-care hospital or limited services hospital:

(1) all limited services hospitals in the local community;

(2) all acute-care hospitals in the local community;

(3) the limited services hospital applying for the initial license or the acute-care hospital applying for the initial license must submit a business plan that provides information necessary to determine the projected annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients.

H. Reporting Requirements-Specific. The reporting requirement for information necessary to

determine the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients, including the number of nonpaying and low-income reimbursed patients treated, for the hospital's last full and audited accounting period, shall be satisfied by the provision of a certified statement by the hospital's chief executive officer and an independent certified public accountant attesting to the accuracy of the above required information, in the format determined by the department. The department shall conduct, as determined necessary, an independent audit to validate the information provided in the certified statement.

I. Determination of Proportionality by the Department.

Based upon the certified statements and business plan(s) submitted, the department shall determine whether the application for licensure will provide emergency services and general health care to the number of nonpaying patients and low-income reimbursed patients in the same proportion as the proportion of nonpaying and low-income reimbursed patients that are treated in acute-care hospitals in the local community. Upon that determination by the department that the proportional requirements are met by the applicant and the receipt of a certified statement by the applicant's chief executive officer that the proportions will be maintained, and other rule requirements are met by the applicant, the department may issue a license consistent with the requirements of Section 24-1.5.8 NMSA 1978 (2003).

J. Limitation on Costs to Achieve Proportionality.

The acute-care hospital or limited service hospital applying for licensure after January 1, 2003 shall submit to the department on an annual basis a certified statement from an independent certified public accountant setting out for that reporting year the hospital's annual cost incurred in the provision of care to low-income reimbursed patients and to nonpaying patients, in order to satisfy the hospital's proportionality requirements. Submission to the department of such certified statement from an independent certified public accountant shall be made by the hospital within 30 days of its acceptance by the hospital's board of directors of the annual audited financial statement. The cost incurred in the provision of care to low-income reimbursed patients and nonpaying patients to satisfy the hospital's proportionality requirements is limited to five percent of the hospital's annual net revenue.

K. Penalties for Non-Reporting. Failure to meet the reporting requirements set out in this rule within the proscribed timeliness may result in a civil monetary penalty not to exceed \$500,000, in the suspension or revocation of the hos-

pital's license, the referral to CMS for sanctions under the medicare and medicaid program.

L. Penalties for Failure to Provide Proportional Services. Failure by an acute-care hospital or limited service hospital applying for licensure after January 1, 2003 to provide proportional services to nonpaying and low-income reimbursed patients, as required by this section, in any year following licensure, as determined from the information submitted annually by the hospital's chief executive officer and an independent certified public accountant may result in the Department's imposition of one or more of the following penalties:

(1) a department-directed or department approved plan of correction in which the hospital's failure to provide proportional services to nonpaying and low-income reimbursed patients is remedied in subsequent years through the additional provision of services to nonpaying and low-income reimbursed patients beyond the proportion established by the department for such years;

(2) a civil monetary penalty not to exceed ~~[\$500,000]~~ \$500,000;

(3) suspension or revocation of the hospital's license; and

(4) referral to CMS for sanctions under the medicare and medicaid programs.

M. Annual Reporting.

Acute-care hospitals or limited services hospitals licensed after January 1, 2003, and all acute-care hospitals in the local community, shall submit to the department on an annual basis a certified statement from an independent certified public accountant that sets out:

(1) the annual cost of care for emergency and general health care to nonpaying and low-income reimbursed patients;

(2) the annual net patient service revenue;

(3) the number of nonpaying and low-income reimbursed patients treated; and

(4) the total number of patients treated.

N. Physician Owner Disclosure of Financial Interest Requirements, Disclosure Required.

The physician owner of a limited services hospital or an acute-care hospital initially licensed by the department at any time after January 1, 2003 shall not make a referral of a patient for the provision of health care items or services to such limited services hospital or the acute-care hospital unless, in advance of any such referral, the referring physician owner discloses to the patient the existence and the nature of physician's ownership interest.

O. Disclosure of Financial Interest by a Physician Owner.

The disclosure of financial interest by a physician owner, as required in this section, shall be made in writing, prior to or at the time of the referral, and shall be furnished to:

(1) the patient, or the patient's authorized representative, and

(2) the acute-care hospital or the limited services hospital licensed by the department at any time after January 1, 2003, in which the referring physician owner has a financial interest, for inclusion in the hospital's permanent patient's medical record; the acute-care hospital or the limited services hospital licensed by the department at any time after January 1, 2003 must permit inspection of the patient's medical record by authorized employees of the department to determine the hospital's compliance with this requirement, regardless of the hospital's deemed status.

P. Written Disclosure of Financial Interest by a Physician Owner.

The written disclosure of financial interest by a physician owner, as required in this section, shall include:

(1) the physician's name, address, and telephone number;

(2) the name and address of the limited services hospital or the acute-care hospital licensed by the department at any time after January 1, 2003 to which the patient is being referred by the physician;

(3) the nature of the items or services, which the patient is to receive from the hospital to which the patient is being referred;

(4) the existence, nature and extent of the physician's financial interest in the hospital to which the patient is being referred; and

(5) a signed acknowledgement by the patient or the patient's authorized representative that the required disclosure has been furnished.

Q. To be approved by the New Mexico department of health, a hospital shall comply with these requirements and with all other applicable state laws and local ordinances. Staff of the hospital shall be licensed or registered, as appropriate, in accordance with applicable laws.

R. An application for licensure shall be submitted to the department on a form prescribed by the department. All applications must have the following information:

(1) name of administrator or chief executive officer;

(2) type of facility to be operated and types of services that will be offered;

(3) location of the hospital; and

(4) statement of ownership, which must include:

(a) the name and principle business address of each officer and director for the corporation;

(b) the name and business address of each stockholder owning 10 percent or more of the stock;

(c) copy of the current organizational chart; and

(d) such other information or documents as may be required by the department for the proper administration and enforcement of the licensing law and requirements.

S. The department shall review and make a determination on an application for licensure within 90 working days of receipt of the application.

T. Separate licenses shall be required for hospitals that are maintained on separate premises even though they are under the same management. This does not apply to outpatient departments or clinics of hospitals designated as such which are maintained and operated on separate premises within the same county or, if in another county, not to exceed a one hour drive time from the parent facility. Separate licenses shall not be required for separate buildings on the same grounds or adjacent grounds.

U. Applications submitted for proposed construction of new hospitals or additions to licensed hospitals shall include architectural plans and specifications.

V. Information contained in such applications shall be on file in the department and available to interested individuals and community agencies. [7.7.2.8 NMAC - Rp, 7.7.2.8 NMAC, 06-15-04; A, 03-15-06]

7.7.2.18 G O V E R N I N G B O D Y:

A. General Requirements. The hospital shall have an effective governing body, which is legally responsible for the management and provision of all hospital services, maintenance of the hospital services and the quality thereof.

B. Responsibilities. By-laws. The governing body shall adopt by-laws. The by-laws shall be in writing and shall be available to all members of the governing body as well as the public. The by-laws shall:

(1) stipulate the basis upon which members are selected, their terms of office and their duties and requirements;

(2) specify to whom responsibilities for operation and maintenance of the hospital, including evaluation of hospital practices, may be delegated, and the methods established by the governing body for holding these individuals responsible;

(3) require a physician owner or other provider to disclose to the patient or the patient's representative and document for the patient's medical record a financial interest in the hospital before referring a

patient to the hospital;

(4) provide for the designation of officers, if any, their terms of office and their duties, and for the organization of the governing body;

(5) specify the frequency with which meetings shall be held;

(6) allow for the organization of committees, either standing or ad hoc, to assist the board in carrying out their responsibilities;

(7) provide for the appointment of members of the medical staff; during periods of routine operation, and during disaster and emergency; and

(8) provide mechanisms for the formal approval of the organization, by-laws and rules of the medical staff.

C. Meetings.

(1) The governing body shall meet at regular intervals as stated in its by-laws.

(2) Meetings shall be held frequently enough for the governing body to carry on necessary planning for growth and development and to evaluate the performance of the hospital, including the care utilization of physical and financial assets and the delegation to the CEO/administrator for the hiring and direction of personnel.

(3) Minutes of meetings shall reflect pertinent business conducted.

D. Committees.

(1) The governing body shall appoint committees. There shall be an executive committee and others as allowed by bylaws.

(2) The number and types of committees shall be consistent with the size and scope of activities of the hospital

(3) The executive committee or the governing body as a whole shall establish operating guidelines for the activities and general policies of the various hospital services and committees established by the governing body.

(4) Written minutes, or reports, which reflect business conducted by the executive committee shall be maintained for review by the governing body.

(5) Other committees, which may include finance, joint conference, quality improvement and plant and safety management committees, shall function in a manner consistent with their duties assigned by the governing body and shall maintain written minutes or reports which reflect the performance of these duties. If the governing body does not appoint a committee for a particular area, a member or members of the governing body shall assure the performance of the duties normally assigned to a committee for that area.

E. Medical Staff Liaison.

The governing body shall establish a formal means of liaison with the medical staff by a

joint conference committee or by other means as follows:

(1) a direct and effective method of communication with the medical staff shall be established on a formal, regular basis, and shall be documented in written minutes or reports which are distributed to designated members of the governing body and the active medical staff; and

(2) liaison shall be a responsibility of the joint conference committee or its equivalent and the executive committee for designated members of the governing body.

F. Medical Staff Appointments. The governing body shall appoint members of the medical staff in accordance with the approved medical staff by-laws.

(1) A formal procedure shall be established, governed by written rules covering application for medical staff membership and the method of processing applications during periods of routine operation, and during disaster and emergency.

(2) The procedure related to the submission and processing of applications shall involve the chief executive officer/administrator, the credentials committee of the medical staff or its equivalent, and the governing body.

(3) Action taken by the governing body on applications for medical staff appointments shall be in writing; and available to the licensing authority during surveys or complaint investigations.

(4) Written notification of applicants shall be made by either the governing body or its designated representative.

(5) Applicants selected for medical staff appointment shall sign an agreement to abide by the medical staff rules and by-laws.

(6) The governing body shall establish a procedure for appeal and hearing by the governing body or a designated committee if the applicant or the medical staff wishes to contest the decision on an application for medical staff appointments.

G. Appointment of Chief Executive Officer/Administrator. The governing body shall appoint an administrator or a chief executive officer/administrator for the hospital. The governing body shall review the performance of the chief executive officer/administrator at least annually.

H. Patient Care. The governing body shall establish a policy, which requires that every patient be under the care of a licensed, independent practitioner as determined by the medical staff and governmental body.

I. Physical Plant Requirements. The governing body shall be responsible for providing a physical plant equipped and staffed to maintain the needed facilities and services for patients.

J. Risk Management.

The facility shall have a risk management program. State, county or city facilities must have a risk management plan in accordance with the general services department rules.

K. Discharge Planning.

(1) The governing body shall assure that the hospital maintains an effective, ongoing program coordinated with community resources to facilitate the provision of appropriate follow-up care to patients who are discharged.

(2) The hospital shall have current information on community resources available for continuing care of discharged patients.

(3) The discharge planning program shall:

(a) have a mechanism to identify patients who require discharge planning to provide continuity of medical care to meet their identified needs;

(b) initiate discharge planning in a timely manner;

(c) identify the role of the patient's provider, nursing staff, social work staff, other appropriate staff, the patient, and the patient's family or representative in the initiation and implementation of the discharge planning process;

(d) assure documentation in the medical record of the discharge plan;

(e) allow for the timely and effective transmittal of all medical, social, economic information concerning the patient to persons responsible for subsequent care of the patient;

(f) provide that every patient, or their legal representatives, receive relevant information concerning their health needs and is involved in his or her own discharge planning; and

(g) be reviewed at least once a year to evaluate effectiveness.

[7.7.2.18 NMAC - Rp, 7.7.2.18 NMAC, 06-15-04; A, 03-15-06]

7.7.2.19 POLICIES: Every hospital shall have written policies approved by the governing board and shall include provisions for implementation, and for access by the patient, on:

A. Patient rights and responsibilities: a list of these patient rights and responsibilities shall be available in languages appropriate to the ethnic needs of the community;

(1) The policies on patient rights and responsibilities shall provide that:

(a) patients may not be denied appropriate hospital care because of the patient's race, creed, color, national origin, religion, sex, sexual orientation, marital status, age, disability or source of payment;

(b) patients shall be treated with consideration, respect, and recognition of

their individuality, including the need for privacy in treatment;

(c) the individual patient's medical records, including all computerized medical information, shall be kept confidential in accordance with applicable federal, state and local laws;

(d) the patient or any person authorized by statute or in writing by the patient shall have access to the patient's medical record but access to patient's psychiatric records may be limited by treating professionals when specific hospital policies specify requirements for limiting access;

(e) every patient shall be entitled to know who has overall responsibility for the patient's care;

(f) every patient, legally authorized person or any person authorized in writing by the patient, shall receive, from the appropriate person within the facility, information about his illness, course of treatment and prognosis for recovery in terms the patient can understand;

(g) every patient, or his designate representative, where appropriate, shall have the opportunity to participate to the fullest extent possible in planning for his care and treatment;

(h) every patient, or his designated representative, shall be given, at the time of admission, a copy of the patient's rights and responsibilities;

(i) except in emergencies, the consent of the patient, or their legally authorized representative, shall be obtained before treatment is administered;

(j) any patient may refuse treatment to the extent permitted by law and shall be informed of the medical consequences of the refusal;

(k) the patient, the patient's legally authorized representative, or person granted the power to authorize medical treatment, shall be fully informed and give consent for the patient's participation in any form of research or experimentation;

(l) except in emergencies, the patient may be transferred to another facility only with a full explanation of the reason for the transfer, provision for continuing care; and acceptance by the receiving institution;

(m) every patient may examine and receive an explanation of the patient's hospital bill regardless of source of payment, and may receive upon request, information relating to financial assistance available through the hospital;

(n) every patient shall be informed of his responsibility to comply with hospital rules, cooperate in the patient's own treatment, provide a complete and accurate medical history, be respectful of other patients, staff and property, and provide required information concerning

payment of charges;

(o) every patient shall be informed in writing about the hospital's policies and procedures for initiation, review and resolution of patient complaints, including the address where complaints may be filed with the department;

(p) every patient shall be allowed to designate who may be permitted to visit during the hospital stay in accordance with the hospital policy; and

(q) every patient shall have freedom from physical or verbal abuse, harassment and inappropriate physical and chemical restraints;

(r) hospitals must be in compliance with CMS's patient rights condition of participation.

(2) The policies on patient rights and responsibilities shall also provide that patients who receive treatment for mental illness, or developmental disability, in addition to the rights listed herein, have the rights provided in section 43-1-6 NMSA 1978.

(3) Hospital staff assigned to provide direct patient care shall be informed of, and demonstrate their understanding of, the policies on patient rights and responsibilities through orientation and appropriate in-service training activities.

B. Movement of Visitors:

The hospital shall develop policies regarding the movement of visitors, which provide for infection control and patient privacy, but also allow the patient appropriate freedom as to the time, nature, and location of visit.

C. Use of Volunteers:

(1) the scope of volunteer activities shall be delineated in hospital policies and procedures and shall cover periods of routine operation and periods of disaster and emergency operation;

(2) volunteers may assist with patient care only under direct supervision of appropriate hospital personnel and after appropriate, documented in-service training; volunteers may not perform procedures permitted only by a licensed health care provider;

(3) no volunteer under 16 years of age may assist with or render direct patient care.

D. Identification: The hospital shall develop a method to identify employees, patients, personnel records and patient files.

E. Cancer Reporting: every hospital shall report to the tumor registry all malignant neoplasms that are diagnosed by the hospital and all malignant neoplasm's diagnosed elsewhere if the individual is subsequently admitted to the hospital; the report of each malignant neoplasm shall be made on a form prescribed or approved by the department and shall be submitted to the UNM tumor registry within six months

after the diagnosis is made or within six months after the individual's first admission to the hospital if the neoplasm is diagnosed elsewhere, as appropriate; in this paragraph, "malignant neoplasm" means an in situ or invasive tumor of the human body, but does not include a squamous cell carcinoma or basal cell carcinoma arising in the skin.

F. Post - Mortem Examinations:

(1) the hospital shall have policies for notifying all personnel of special handling needs during post-mortem procedures;

(2) the hospital shall have policies for the release of a deceased human body to a funeral director or other authorized person.

G. Tagging of Bodies: all deceased human bodies to be removed from a hospital shall be tagged by staff of the hospital; a red tag shall be used to indicate the possibility of the presence of the communicable or infectious disease or radioactive materials. If the body is in a container, a tag shall also be applied to the outside of the container.

H. Autopsy: Reports are to be distributed to the primary provider and become part of the patient's clinical record.

I. Withholding of Resuscitative Services from Patients.

(1) A policy shall be developed in consultation with the medical staff, nursing staff, and other appropriate bodies and shall be adopted by medical staff and approved by the governing body. The policy shall describe:

(a) a mechanism(s) for reaching decisions about the withholding of resuscitative services from individual patients;

(b) the mechanism(s) for resolving conflicts in decision making, should they arise;

(c) the roles of physicians and, when applicable, of nursing personnel, other appropriate staff, and family members in the decision to withhold resuscitative services;

(d) provisions designed to assure that patients' rights are respected when decisions are made to withhold resuscitative services;

(e) a requirement that patients, or their legal representative(s), and family members must be afforded the opportunity to make their wishes known about decisions affecting the patient's end of life care;

(f) a requirement that appropriate orders be written by the physician or other licensed independent practitioners primarily responsible for the patient and that documentation be made in the patient's medical record.

(2) A decision to withhold resuscitative services does not absolve the hospi-

tal from providing basic patient care.

J. Anatomical Gifts: A policy shall be adopted and implemented for organ and tissue donation in accordance with ~~[section 7.7.2.41 NMAC]~~ Section 7.7.2.42 NMAC; the policy shall include procedures to assist the medical, surgical and nursing staff in identifying, evaluating and reporting potential organ and tissue donors.

K. Reporting: A policy for compliance with all applicable state and federal reporting requirements must be adopted and updated as necessary; such federal requirements include but are not limited to the New Mexico health policy commission, the national practitioner data bank and the healthcare integrity and protection data bank.

[7.7.2.19 NMAC - Rp, 7.7.2.19 NMAC, 06-15-04; A, 03-15-06]

7.7.2.22 INFECTION CONTROL:

A. Program. The hospital shall have an infection control program designed to reduce the number of infections, including nosocomial infections, within the hospital.

B. Program Approval.

(1) Purpose: The governing body or medical staff shall approve an infection control program to carry out surveillance and investigation of infections in the hospital and to implement measures designed to reduce these infections to the extent possible.

(2) Responsibilities: The infection control program shall:

(a) establish techniques and systems for discovering and isolating infections occurring in the hospital;

(b) establish written infection control policies and procedures, which govern the use of aseptic technique and procedures in all areas of the hospital;

(c) establish a method of control used in relation to the sterilization of supplies and solutions; there shall be a written policy requiring identification of sterile items and specified time periods in which sterile items shall be reprocessed;

(d) establish policies specifying when employees or persons providing contractual services with infections or contagious conditions, including carriers of infectious organisms, shall be relieved from, or reassigned duties, until there is evidence that the disease or condition poses no significant risk to others;

(e) at least annually assess effectiveness of the infection control process; and

(f) establish effective guidelines for the disposition of infectious materials in accordance with the local, state and federal

guidelines.

C. Education: The hospital shall provide training to all appropriate hospital personnel on the epidemiology, etiology, transmission, prevention and elimination of infection, as follows:

(1) aseptic technique: all appropriate personnel shall be educated in the practice of aseptic techniques such as hand-washing and scrubbing practices, standard precautions, personal hygiene, masking and dressing techniques, disinfecting and sterilizing techniques and the handling and storage of patient care equipment and supplies, to include the handling of needles and sharp instruments; and

(2) orientation and in-service: new employees shall receive appropriate orientation and on-the-job training, and all employees shall participate in a continuing in-service program; the participation shall be documented.

D. General Infection Control Provisions.

(1) There shall be regular inspection and cleaning of air intake sources, screens and filters, with special attention given to high risk areas of the hospital as determined by the infection control committee.

(2) A sanitary environment shall be maintained to avoid sources and transmission of infection.

(3) Proper facilities shall be maintained, and techniques used, for disposal of infectious wastes, as well as sanitary disposal of all other wastes.

(4) Hand-washing facilities shall be provided in patient care areas for the use of hospital personnel.

(5) Sterilizing services shall be available at all times.

(6) Soiled linen shall be contained and secured at the point generated. It can be transported to a designated area or cleaning facilities. No special precautions beyond the standard precautions are necessary. Soiled bed linen shall be placed immediately in a container available for this purpose and sent to the laundry promptly.

(7) Tuberculosis exposure control plan.

(a) A program to minimize the risk of infectious tuberculosis among or between health care workers, patients, or visitors and others shall be developed.

(b) This program shall include: a comprehensive facility-wide risk assessment, early identification, isolation, and treatment of potentially infectious tuberculosis patients, effective engineering controls to prevent the spread, and reduce the concentration of, infectious droplet nuclei, a written, respiratory protection program to protect health care workers from exposure, education, counseling, and screening

processes for health care workers.

E. Reporting Disease: Hospitals shall report cases and suspected cases of [~~reportable communicable disease to local health offices and to the office of epidemiology in Santa Fe~~] notifiable conditions as listed in 7.4.3.13 NMAC to the New Mexico department of health pursuant to New Mexico regulations governing the control of disease and conditions of public health significance, New Mexico department of health, [~~7 NMAC 4.3~~], 7.4.3 NMAC or any superceding regulation.

F. Policies and Procedures. There shall be written policies and procedures pertinent to care of patients with communicable diseases that shall include standard precautions.

(1) These policies and procedures shall be developed by administrative, medical, and nursing staff.

(2) The policies and procedures shall be applicable within the hospital, designed to ensure safe and adequate care to patients, safety to hospital employees, and consistent with applicable laws and regulations.

(3) Policies shall be made known to, and readily available to all hospital employees as well as the medical and nursing staff, and shall be followed in the care of patients, and shall be kept current by periodic review and revision.

[7.7.2.22 NMAC - Rp, 7.7.2.22 NMAC, 06-15-04; A, 03-15-06]

7.7.2.25 DISASTER AND EMERGENCY MANAGEMENT:

A. Plan: Each hospital shall have in operation a written plan for disaster and emergency management developed with the involvement of the hospital's executive, medical, and nursing staff and designed to ensure that each hospital is prepared to provide effective and efficient response to disasters and emergencies occurring in the community directly served by each hospital and in neighboring communities in New Mexico and adjacent states.

(1) **Description of Plan:** The written plan for disaster and emergency management shall:

(a) identify the responsibilities and authorities of those involved in the conduct of disaster and emergency management activities within the hospital, including the responsibility and authority of chief executive officer of the hospital for the activation of the plan;

(b) be consistent with the concepts, principles, standards, guidelines, and terminology of the national response plan and the national incident management system;

(c) be coordinated with the local emergency operations plan, or the metro-

politan medical response system plan, of the community directly served and with the New Mexico state all-hazard emergency operations plan;

(d) address the natural, accidental, negligent, and intentional hazards, identified through a hazard vulnerability analysis, to which the hospitals may be expected to respond;

(e) provide for direction, planning, education, training, exercise, drill, staff qualification and certification, equipment acquisition and certification, resource management, communications and information management, and ongoing management, improvement and maintenance;

(f) describe the direct responses of the hospital to disaster and emergency occurring in the community directly served by the hospital, the overflow and back-up responses of the hospital to disaster and emergency occurring in neighboring communities not directly served, and the efforts of the hospital in support organized and sponsored health professional disaster and emergency volunteer teams.

(2) **Exercise and Drill of Plan:** Exercises and drills of the plan, both internally, and in conjunction with local and state disaster and emergency exercises and drills, shall be conducted at least twice a year to practice response and to serve as a basis for plan improvement.

(3) **Evaluation and Revision of Plan:** The appropriateness and adequacy of the plan shall be evaluated on an annual basis, and the plan shall be revised as necessary.

B. Communications Systems: With the assistance of the New Mexico department of health each hospital shall establish and maintain connections with the various disaster and emergency management communications systems in New Mexico.

C. Bed Polling: Each hospital shall participate in the electronic bed polling system operated by the New Mexico department of health.

D. Mutual Aid Agreements and Regional Response Plans: Coordination of hospital disaster and emergency management plans with local emergency operations plans and with the New Mexico state all-hazard emergency operations plan shall be recognized to serve the purposes of individual mutual aid agreements and of regional response plans.

E. Public Health Emergency Response: In the event that a public health emergency is declared pursuant to the Public Health Response Act, Sections 12-10A- to 12-10A-19, NMSA 1978, the secretary of health, in coordination with the secretary of public safety and the director of homeland security, may:

(1) utilize, secure or evacuate

health care facilities for public use; and (2) inspect, regulate the allocation, sale, dispensing, or distribution of, or ration health care supplies in short supply within New Mexico.

[7.7.2.25 NMAC - Rp, 7.7.2.25 NMAC, 06-15-04; 7.7.2.25 NMAC - N, 03-15-06]

[7.7.2.25] 7.7.2.26 MEDICAL STAFF:

A. General Requirements:

(1) **Organization and Accountability:** The hospital shall have a medical staff organized under by-laws approved by the governing body. The medical staff shall be responsible to the governing body of the hospital for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members.

(2) **Responsibility of Members:** Members of the medical staff shall comply with medical staff and hospital policies. The medical staff by-laws shall prescribe disciplinary procedures for infraction of hospital and medical staff policies by members of the medical staff. There shall be evidence that the disciplinary procedures are applied where appropriate.

B. Membership.

(1) **Active Staff:** A hospital shall have an active medical staff, which performs all the organizational duties pertaining to the medical staff. Active staff membership shall be limited to individuals, as defined in [~~Subsection AG of section 7.7.2.7~~] Subsection LL of 7.7.2.7 NMAC of these requirements, who are currently licensed. Individuals may be granted membership in accordance with the medical staff by-laws and rules, and in accordance with the by-laws of the hospital.

(2) **Other staff:** The medical staff may include one or more categories defined in the medical staff by-laws in addition to the active staff including a category to cover appointment during periods of disaster and emergency.

C. Appointment.

(1) **Governing Body Responsibilities:**

(a) medical staff appointments shall be made by the governing body, taking into account recommendations made by the active medical staff;

(b) the governing body shall biennially ensure that members of the medical staff are qualified legally and professionally for the position to which they are appointed;

(c) the hospital, through its medical staff, shall require applicants for medical staff membership to provide, in addition to other medical staff requirements, a complete list of all hospital medical staff memberships held within five years prior to application; and

(d) hospital medical staff applica-

tions shall require reporting any malpractice action, any previously successful and currently pending challenges to licensure in this or another state, and any loss or pending action affecting medical staff membership or privileges at another hospital.

(2) Medical staff responsibilities:

(a) to select its members and delineate their privileges, the hospital medical staff shall have a system, based on specific standards for evaluation of each applicant by a credentials committee, which makes recommendations to the medical staff and to the governing body; and

(b) the medical staff may include one or more categories of medical staff defined in the medical staff by-laws in addition to the active medical staff, including a category to cover appointment during periods of disaster and emergency, but this in no way modifies the duties and responsibilities of the active staff.

D. Criteria for Appointment.

(1) Criteria for selection shall include the individual's current licensure, health status, professional performance, judgment and clinical and technical skills.

(2) All qualified candidates shall be considered by the credentials committee or during periods of disaster and emergency by a member of the medical staff or administration who represents the credentials committee.

(3) Re-appointments shall be made at least biennially and recorded in the minutes or files of the governing body. Reappointment policies shall provide for a periodic appraisal of each member of the staff, including consideration at the time of reappointment of information concerning the individual's current licensure, health status, professional performance, judgment and clinical and technical skills. Recommendations for re-appointments shall be noted in the minutes of the meetings of the appropriate committee.

(4) Temporary staff privileges may be granted for a limited period if the individual is qualified for membership on the medical staff.

(5) Disaster and emergency privileges may be granted to qualified individuals during disasters and emergencies.

~~(5)~~**(6)** A copy of the scope of privileges to be accorded the individual shall be distributed to appropriate hospital staff. The privileges of each staff member shall be specifically stated or the medical staff shall define a classification system. If a system involving classifications is used, the scope of the categories shall be well defined, and the standards that must be met by the applicant, shall be clearly stated for each category.

~~(6)~~**(7)** If other categories of staff

membership are to be established for allied health personnel, the necessary qualifications, privileges and rights shall be delineated in accordance with the medical staff by-laws.

E. Consultations.

(1) The medical staff must have established policies concerning the holding of consultations.

(2) Except in an emergency, consultations are required when:

(a) the patient is not a good medical or surgical risk;

(b) the diagnosis is obscure;

(c) there is doubt as to the best therapeutic measures to be utilized; or

(d) when the patient, or legally authorized person, requests such consultation.

(3) Consultations must be included in the medical record. When operative procedures are involved, the consultation note, except in an emergency, shall be recorded prior to the operation.

(4) The patient's physician or authorized licensed independent practitioner is responsible for requesting consultations when indicated. It is the duty of the medical staff to make certain that members of the medical staff contact consultants as needed.

F. By-Laws.

(1) Adoption and Purpose: By-laws shall be adopted by the medical staff and approved by the governing body to govern and enable the medical staff to carry out its responsibilities. The by-laws of the medical staff shall be a precise and clear statement of the policies under which the medical staff regulates itself.

(2) Content: Medical staff by-laws and rules shall include:

(a) a descriptive outline of the medical staff organization;

(b) a statement of the necessary qualifications which each member must possess to be privileged to work in the hospital, during periods of routine operation, as well as during periods of disaster and emergency, and of the duties and privileges of each category of medical staff;

(c) a procedure for granting or withdrawing privileges to each member; and an appeal process for privilege withdrawal or refusal;

(d) a mechanism for appeal of decisions regarding medical staff membership and privileges;

(e) provision for regular meetings of the medical staff;

(f) provision for keeping timely, accurate and complete records;

(g) provisions for routine examination of all patients upon admission and recording of the preoperative diagnosis prior to surgery;

(h) a stipulation that a surgical operation is permitted only with the consent of the patient or legally authorized person except in emergencies;

(i) statements concerning the request for the performance of consultations, and instances where consultations are required; and

(j) a statement specifying categories of personnel duly authorized to accept and implement medical staff orders.

G. Governance.

(1) The medical staff shall have the numbers and kinds of officers necessary for the governance of the staff.

(2) Officers shall be members of the active staff and shall be elected by the active medical staff.

H. Meetings.

(1) Number and Frequency: The number and frequency of medical staff meetings shall be determined by the active medical staff and clearly stated in the by-laws of the medical staff. At a minimum the executive committee of the medical staff shall meet at least quarterly.

(2) Attendance: Attendance records shall be kept of medical staff meetings. Attendance requirements for each individual member shall be clearly stated in the by-laws of the medical staff.

(3) Purpose: Full medical staff meetings shall be held to conduct the general business of the medical staff and to review the significant findings identified through the quality improvement program.

(4) Minutes: Minutes of all meetings shall be kept.

I. Committees.

(1) Establishment: The medical staff shall establish committees of the medical staff and is responsible for their performance.

(2) Executive committee: The medical staff shall have an executive committee to coordinate the activities and general policies of the various departments, act for the staff as a whole under limitations that may be imposed by the medical staff bylaws, and receive and act upon the reports of all other medical staff committees.

J. Administrative

Structure: Hospitals may create services to fulfill medical staff responsibilities. Services are responsible for the quality of care rendered to patients under their care.

[7.7.2.26 NMAC - Rp, 7.7.2.26 NMAC, 06-15-04; 7.7.2.26 NMAC - Rn, 7.7.2.25 NMAC & A, 03-15-06]

~~[7.7.2.26]~~ 7.7.2.27 **NURSING SERVICES:**

A. Requirement. The hospital shall provide a 24-hour nursing service, supervised by a professional registered nurse, and have a licensed practical nurse or

professional registered nurse on duty at all times.

B. Administration.

(1) The nursing services shall be directed by a professional registered nurse with appropriate education and experience to direct the service. A professional registered nurse with administrative authority shall be designated to act in the absence of the director of the nursing services. Appropriate administrative staffing shall be provided on all shifts.

(2) There shall be a written plan showing the flow of authority throughout the nursing service, with delineation of the responsibilities and duties of each category of nursing staff.

(3) The delineation of responsibilities and duties for each category of the nursing staff shall be in the form of a written job description for each category.

C. Staffing.

(1) An adequate number of professional registered nurses shall be on duty at all times to meet the nursing care needs of the patients. There shall be qualified supervisory personnel for each service or unit to ensure adequate patient care management.

(2) The number of nursing personnel for all patient care services of the hospital shall be consistent with the nursing care needs of the hospital's patients.

(3) The staffing pattern shall ensure the availability of professional registered nurses to assess, plan, implement and direct the nursing care for all patients on a 24-hour basis.

D. Patient Care.

(1) Care planning:

(a) All nursing care shall be planned and directed by professional registered nurses. A professional registered nurse shall be on duty and immediately available to give direct patient care when needed.

(b) A professional registered nurse shall be available at all times to render direct care in the facility.

(2) Care determinants:

(a) A professional registered nurse shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and competence of the available nursing staff.

(b) The ratio of licensed nursing personnel to patients shall be determined by the acuity of patients, the patient census, and complexity of care that must be provided.

(c) A professional registered nurse shall plan, supervise and evaluate the care of all patients, including the care assigned to licensed practical/vocational nurses and non-licensed care givers.

(d) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the services of a

professional registered nurse.

(3) Special care units: Areas providing specialized nursing care shall be well defined by policies and procedures specific to the nursing services provided. These areas may include, but shall not be limited to, intensive care, coronary care, obstetrics, nursery, renal units, burn units, and emergency rooms.

(a) Specific policies and procedures shall supplement basic hospital nursing policies and procedures. Nursing policies and procedures of special care units shall keep pace with best practice and new knowledge and shall include but not be limited to: protocols for resuscitation and disaster situations, immediate availability of emergency equipment and drugs, appropriate and safe storage of pharmaceuticals and biologicals, programs for maintenance and safe operation of all equipment, appropriate infection-control measures, control of visitors and non-essential personnel, and documentation of quality improvement.

(b) Special-care unit nursing services shall be integrated with other hospital departments and services.

(c) Supervision of nursing care in the unit shall be provided by a professional registered nurse with relevant education, training, experience, and demonstrated current competence.

(d) All nursing personnel shall be prepared for their responsibilities in the special-care unit through appropriate orientation, ongoing in-service training, and continuing education programs. Each hospital shall have a planned, formal training program for all nurses and shall be of sufficient duration and substance to cover all patient-care responsibilities in the special care unit.

E. Staff Qualifications.

(1) Individuals selected for the nursing staff shall be qualified by education, experience, and current competence for the positions to which they are appointed.

(2) The education and experience qualifications of the director of nursing supervisors, and other medical professionals shall be commensurate with the scope and complexity of the services of the hospital.

(3) The functions and qualifications of nursing personnel shall be clearly defined in relation to the duties and responsibilities delegated to them.

(4) Personnel records, including application forms and verifications of current licensure and credentials, shall be on file.

(5) Nursing management shall make decisions about the selection and promotion of nursing personnel based on their qualifications and capabilities and shall recommend the termination of employment when necessary.

(6) Approval: There shall be a policy and procedure to ensure that hospital nursing personnel for whom registration, a license or other approval is required by law shall have valid and current registration, licensure or other approval.

(7) There shall be a policy and procedure governing the qualifications and selection of nursing personnel during periods of disaster and emergency.

F. Evaluation and Review of Nursing Care:

There shall be a review and evaluation of the nursing care provided for patients. There shall be written nursing care procedures and plans of care.

(1) Responsible staff: A licensed professional registered nurse shall plan, supervise, and evaluate the nursing care for each patient.

(2) The director of nursing is responsible for the effective use of care plans by the nursing staff.

(3) Nursing care plan: Nursing care plans shall be kept current. Plans shall indicate nursing care needed, how it is to be accomplished, and methods, approaches, and modifications necessary to obtain best results for patients.

(4) Nursing notes: Nursing notes shall be legible, informative and descriptive of the nursing care given and include information and observations of significance so that they contribute to the continuity of patient care.

G. Orientation and In-Service.

(1) There shall be a comprehensive and thorough employee orientation program for all nursing services personnel.

(2) The facility shall provide orientation to nursing services personnel before they provide care to patients.

H. Hospital Relationships.

(1) General: The nursing service shall have well-established working relationships with the medical staff and with other hospital staff that provide and contribute to patient care.

(2) Policies: Written policies and procedures affecting nursing services shall be developed and reviewed with the participation of the director of nursing or designee, in consultation with other appropriate health professionals and administration. The governing body shall approve the policies. The nursing service shall be represented on hospital committees that affect patient care policies and practices.

I. Documentation, Staff Meetings and Evaluation.

(1) Nursing care policies and procedures that reflect optimal standards of nursing practice shall be written and approved, and shall be reviewed and revised as necessary to keep pace with current knowledge. Written nursing care policies

and procedures shall be available on each nursing unit.

(2) There shall be a written nursing care plan for each patient, which shall include the elements of assessment, planning, intervention and evaluation.

(3) Documentation of nursing care shall be pertinent and concise and shall describe patient status needs, problems, capabilities and limitations. Nursing intervention and patient response shall be noted.

(4) Meetings of the nursing staff shall be held at least once every two months to discuss patient care, nursing services problems and administrative policies. Minutes of all meetings shall be kept and shall be available to all staff members.

(5) The nursing services director shall ensure that there is ongoing review and evaluation of the nursing care provided for patients and shall assure that nursing care standards and objectives are established and met. If the nursing department is decentralized into clinical departmental services or clinical programs are established, there shall be one administrator to whom the nursing directors shall be accountable and who has the responsibility to assure one standard of nursing practice within the organization.

J. Additional Patient Care Requirements.

(1) In this subsection, "circulating nurse" means a professional registered nurse who is present during an operation to provide emotional support to the patient, assist with the anesthesia induction, and throughout the surgical procedure or delivery, coordinate the activities of the room, monitor the traffic in the room, maintain an accurate account of urine and blood loss, and who, before the surgical procedure or delivery is completed, informs the recovery rooms of specials needs and ensures that the sponge, needle and instrument counts have been done according to hospital policy.

(2) Obstetrical: Every patient admitted in labor shall be assessed initially by a professional registered nurse or physician.

(3) Surgical:

(a) A professional registered nurse shall supervise the operating room(s).

(b) A qualified professional registered nurse shall function as the circulating nurse in the surgical and obstetrical room whenever general anesthesia is used and on all local anesthesia cases involving a high degree of patient risk. Individual surgical technologists and licensed practical nurses may function as assistants under the direct supervision of a qualified professional registered nurse.

(4) Temporary nursing personnel:

(a) When contract nursing personnel from outside registries or agencies

are used by the hospital, the nursing services shall have a means for evaluating the credentials and competence of these personnel. Contract nursing personnel shall function under the direction and supervision of a qualified professional registered nurse from the hospital nursing staff. The temporary nursing personnel shall have an orientation to the facility.

(b) If private duty nursing personnel are employed by the patients, the nursing department shall ensure the private duty nursing agency has a means for evaluating the credentials and competence of these personnel. The hospital shall have policies regarding use of these personnel in the facility.

(5) Medications: Only the following shall be permitted in accordance with the Nurse Practice Act and the requirements of the board of nursing:

(a) a professional registered nurse may pass medications;

(b) a licensed practical nurse or a student nurse in an approved school of nursing under the supervision of a licensed professional registered nurse may pass medications;

(c) medications may not be prepared by nursing personnel on one shift for administration during succeeding shifts;

(d) medication administration may not be delegated to unlicensed personnel.;

(6) Reporting: The hospital shall have effective policies and procedures for reporting transfusion reactions, adverse drug reactions, accidents and medication errors. The medical staff shall review summary reports of these reactions, accidents and errors at least quarterly.

[7.7.2.27 NMAC - Rp, 7.7.2.27 NMAC, 06-15-04; 7.7.2.27 NMAC - Rn, 7.7.2.26 NMAC & A, 03-15-06]

~~[7.7.2.27]~~ **7.7.2.28 DIETARY SERVICES:** The hospital shall provide a 24-hour dietary service or contract for a 24-hour dietary services which meets the requirements of this section, and which shall provide meals and other nutritional care to its patients. The dietary service shall be integrated with other services of the hospital.

A. Administrative.

(1) There shall be written policies and procedures for food storage, preparation and service and clinical aspects developed by the dietitian.

(2) There shall be a qualified person serving as full-time director of the service who shall be responsible for the daily management aspects of the service.

(3) The dietitian shall participate in the nutritional aspects of patient care by means that include assessing the nutritional

status of patients, instructing patients, recording diet histories, interpreting and integrating therapeutic principles, participating appropriately in patient rounds and conferences, and recording in medical records and sharing specialized knowledge with others on the medical team.

(4) There shall be written job descriptions for all dietary employees.

(5) The dietitian shall be responsible for maintaining a current diet manual for therapeutic diets, approved jointly by the dietitian and a qualified member of the medical staff. The dietetic manual shall be developed on recognized current therapeutic practices. The dietitian shall recommend this manual to a qualified member of the medical staff for approval for use in the facility. All changes must be submitted to a qualified member of the medical staff for approval prior to inclusion in the manual.

(6) There shall be an in service training program for dietary employees which shall include instruction in proper storage, preparation and serving food, safety, appropriate personal hygiene and infection control.

(7) A menu cycle shall be available and posted. Substitutions of equal nutritional value are acceptable and shall be noted. The hospital must keep for 30 days a record of each menu as served.

(8) A hospital that contracts for its dietary services shall be in compliance with this section if the contracted services meets all applicable rules of this section.

B. Facilities.

(1) Adequate facilities shall be provided to meet the dietary needs of the patients.

(2) Sanitary conditions shall be maintained for the storage, preparation and distribution of food.

(3) All dietary areas shall be appropriately located, adequate in size, well-lighted, ventilated and maintained in a clean and orderly condition.

(4) Equipment and work areas shall be clean and orderly. Effective procedures for cleaning and sanitizing all equipment and work areas shall be followed consistently to safeguard the health of the patients, staff and visitors.

(5) Lavatories specifically for hand-washing shall include hot and cold running water, soap, and disposable towels or air dryers, and shall be conveniently located throughout the service area for use by dietary staff.

(6) The dietary service shall have written reports of the most recent environmental or licensing inspection on file at the hospital with notation made by the hospital of action taken to comply with recommendations or citations.

(7) Dry or staple food items shall

be stored off the floor in a ventilated room which is not subject to sewage or waste water back-flow or contamination by condensation, leakage, rodents or vermin.

(8) All perishable foods shall be refrigerated and the temperature maintained at, or below, 40 degrees Fahrenheit.

(9) Hot food shall be maintained at 140 degrees Fahrenheit, or higher.

(10) Foods being displayed or transported shall be protected from environmental contamination and maintained at proper temperatures in clean containers, cabinets or serving carts.

(11) Dishwashing procedures and techniques shall be well-developed and understood by the responsible staff, with periodic monitoring of the operation of the detergent dispenser, washing, rinsing, and sanitizing temperatures and the cleanliness of machine and jets, and thermostatic controls.

(12) A daily log of recorded temperatures for all refrigerators, freezers, steam tables and dishwashers must be maintained and available for inspection for 30 days.

(13) All garbage and kitchen refuse not disposed of through a garbage disposal unit shall be kept in watertight containers with close-fitting covers and disposed of daily in a safe and sanitary manner.

(14) Food and non-food supplies shall be clearly labeled and dated and shall be stored in separate areas.

(15) No hazardous non-food items shall be stored in the proximity of materials that could compromise the safety of the food supply.

(16) The dietitian shall be responsible for, and active in, the hospital's quality improvement program.

C. Records.

(1) A systematic record shall be maintained of all diets.

(2) Therapeutic diets shall be prescribed by an authorized individual in written orders on the medical record.

(3) Nutritional needs shall be in accordance with physicians' orders and, to the extent medically possible, in accordance with the "recommended daily dietary allowance" of the food and nutrition board of the national research council, national academy of sciences. A current edition of these standards shall be available in the dietary service.

(4) The qualified staff person who instructs the patient in home diet shall document this in the medical record.

D. Sanitation. All practices shall be in accordance with the standards of the New Mexico environment department.

(1) Kitchen sanitation.

(a) Equipment and work areas shall be clean and orderly. Surfaces with

which food or beverages come into contact shall be of smooth, impervious material free of open seams, not readily corrodible and easily accessible for cleaning.

(b) Utensils shall be stored in a clean, dry place protected from contamination.

(c) The walls, ceiling and floors of all rooms in which food or drink is stored, prepared or served shall be kept clean and in good repair.

(2) Washing and sanitizing of kitchenware.

(a) All reusable tableware and kitchenware shall be cleaned in accordance with procedures as outlined by the New Mexico environment department, which shall include separate steps for pre-washing, washing, rinsing and sanitizing.

(b) Dishwashing procedures and techniques shall be well-developed, understood by dishwashing staff and carried out according to policy. To make sure that service ware is sanitized and to prevent recontamination, correct temperature maintenance shall be monitored during cleaning cycles.

(3) Canned or preserved foods.

(a) All processed food shall be procured from sources that process the food under regulated quality and sanitation controls. This does not preclude the use of local fresh produce.

(b) The hospital may not use home-canned foods.

(4) Cooks and food handlers.

Cooks and food handlers shall wear clean outer garments and hair nets or caps and gloves as needed, and shall keep their hands clean at all times when engaged in handling food, drink, utensils or equipment. Food handlers must obtain a tuberculosis test, prior to employment and as often as required thereafter according to hospital policy.

(5) Milk.

(a) Raw milk shall not be used.

(b) Milk for drinking shall be grade A pasteurized whole milk (3 1/4% milk fat or greater and not less than 8 1/4% milk solids, not fat) or any other grade A fluid milk product as defined in the New Mexico Restaurant Act (includes skim milk, low-fat milk, and cream products) unless otherwise requested by the patient or as a part of a therapeutic diet.

(c) Condensed, evaporated, and/or dried milk products which are recognized nationally, may be employed as "additives" in cooked food preparation but shall not be substituted or served to patients (adult, child, or infant) in place of milk as approved for drinking purposes. These products shall be handled and stored in accordance with the requirements of the current dietary practices.

[7.7.2.28 NMAC - Rp, 7.7.2.28 NMAC, 06-15-04; 7.7.2.28 NMAC - Rn, 7.7.2.27

NMAC, 03-15-06]

[7.7.2.28] 7.7.2.29 PHARMACY SERVICES:

A. Organization.

(1) Pharmacy: The hospital pharmacy including pharmaceuticals contained in disaster and emergency caches held by the hospital, shall be supervised by a designated pharmacist-in-charge who is employed part-time or full-time. If employed part-time, the pharmacist shall visit the facility at least every 72 hours.

(2) Other storage: If there is no pharmacy, pre-labeled, prepackaged medications shall be stored in, and distributed from, an automated medication management system, which is under the supervision of the pharmacist-in-charge.

(3) Pharmacist accountability: The pharmacist-in-charge shall have appropriate administrative oversight and shall prepare a pharmacy policy and procedure manual that shall be reviewed and updated at least annually.

B. Facility.

(1) Space and Equipment: The pharmacy shall meet the space and equipment requirements specified by the New Mexico board of pharmacy.

(2) Security: The pharmacist shall control access to the pharmacy and any automated medication system devices. Established procedures shall assure accountability for all doses of drugs removed when the pharmacist is not present. Only a designated licensed nurse may remove drugs from the pharmacy when the pharmacist is not present.

(3) Drug preparation areas: All drug storage and preparation areas within the facility shall be the responsibility of the pharmacist and inspected at least monthly.

(4) Pharmacy policies and procedures should address practices to be followed when compounding, reconstituting, and repackaging medications to assure adherence to professional standards of practice for cleanliness and infection control.

(5) Schedule II controlled substance storage: Schedule II controlled substances that are stored in the pharmacy shall be stored in a separate locked storage.

C. Personnel.

(1) The pharmacist shall be assisted by an adequate number of competent and qualified personnel. Job descriptions for all categories shall be prepared and revised as necessary.

(2) A pharmacist shall be on call during all absences of the designated pharmacist from the facility.

D. Records.

Hospital pharmacies shall maintain all dangerous drug distribution records that are required by applicable state and federal laws and regulations, including:

(1) floor stock dangerous drug description records; and

(2) inpatient dangerous drug description records:

(a) schedule II controlled substance distribution records must be kept separate;

(b) schedule III-V controlled substance distribution records must be readily retrievable;

(c) an annual inventory of schedule II-V controlled substances shall be conducted and a record maintained along with the procurement records for these drugs;

(d) when automated drug distribution systems are utilized, they shall produce transaction records that meet the above records keeping requirement;

(e) the pharmacist shall maintain records of quality improvement monitoring of automated drug distribution systems.

E. Other Responsibilities of the Pharmacist.

(1) When limited doses of a drug are removed from the pharmacy when the pharmacist is not present:

(a) the pharmacist shall verify the withdrawal within 72 hours of the withdrawal;

(b) a drug regimen review, pursuant to a new medication order, will be conducted by a pharmacist, either on-site or by electronic transmission, within 24 hours of the new order.

(2) The pharmacist also shall:

(a) provide drug information to staff and patients of the facility;

(b) maintain current drug use reference manuals;

(c) provide and document in-service education to the facility's professional staff;

(d) in conjunction with the practitioners, nurses, and other professional staff, review significant adverse drug reactions; and

(e) review each medication order for safety and appropriateness and communicate with the prescribers when indicated. [7.7.2.29 NMAC - Rp, 7.7.2.29 NMAC, 06-15-04; 7.7.2.29 NMAC - Rn, 7.7.2.28 NMAC & A, 03-15-06]

[7.7.2.29] 7.7.2.30 M E D I C A L RECORDS SERVICES:

A. Medical Record. A medical record shall be maintained for every patient admitted for care in the hospital. The record shall be kept confidential and released only in accordance with the Sections 14-6-1, 14-6-2 NMSA 1978 and, where appropriate, Section 43-1-19 NMSA 1978.

B. Service. The hospital shall have a medical records service with administrative responsibility for all medical

records maintained by the hospital.

(1) Confidentiality:

(a) Written consent of the patient or legally authorized person shall be required for release of medical information to persons not otherwise authorized to receive this information.

(b) Original medical records may not be removed from the hospital except by authorized persons who are acting in accordance with a court order, and where measures are taken to protect the record from loss, defacement, tampering and unauthorized access.

(2) Preservation: There shall be a written policy for the preservation of medical records. The retention period shall be for 10 years following the last treatment date of the patient, except in the case of minor children whose records shall be retained to the age of majority, plus one year.

(a) Laboratory test records and reports may be destroyed one year after the date of the test recorded or reported therein provided that one copy is placed in the patient's record, or stored electronically in the hospital's information system. The hospital is responsible for electronic storage.

(b) X-ray films may be destroyed four years after the date of exposure, if there are in the hospital record written findings of a radiologist who has read such x-ray films. At anytime after the third year after the date of exposure, and upon proper identification, the patient may recover his own x-ray films as may be retained pursuant to this section. The written radiological findings shall be retained as provided by these requirements.

(3) Personnel:

(a) Adequate numbers of personnel who are qualified to supervise and operate the service shall be provided.

(b) A registered medical records administrator or an accredited records technician shall head the services, except that if such a professionally qualified person is not in charge of medical records, a consultant who is a registered records administrator or an accredited records technician shall organize the service, train the medical records personnel and make at least quarterly visits to the hospital to evaluate the records and the operation of the service, and prepare written reports of findings within 30 days.

(c) In this subdivision, "a registered record administrator" or an "accredited record technician" is an individual who has successfully completed the examination requirements of the American Medical Record Association.

(4) Availability:

(a) The system for identifying and filing records shall permit prompt retrieval of each patient's medical records.

(b) A master patient index shall

include at least the patient's full name, sex, birth date and medical record number and/or reference to treatment dates.

(c) Filing equipment and space shall be adequate to maintain the records and facilitate retrieval.

(d) The inpatient, ambulatory care and emergency records of patients shall be kept in such a way that all patient care information can be provided for patient care when the patient is admitted to the hospital, when the patient appears for a pre-scheduled outpatient visit, or as needed for emergency services.

(e) Pertinent medical record information obtained from other providers including patient tracking information for patients admitted during disaster and emergency shall be available to facilitate continuity of the patient's care.

(f) The original or legally reproduced form of all clinical information pertaining to a patient's stay shall be filed in the medical record folder as a unit record. When this is not feasible a system must be in place to provide prompt retrieval of all medical records when a patient is admitted.

(5) Coding and indexing:

(a) Records shall be coded and indexed according to diagnosis, operation and physician. Indexing shall be kept current within six months from the discharge of the patient.

(b) Any recognized system may be used for coding diagnoses, operations and procedures.

(c) The indices shall list all diagnoses for which the patient was treated during the hospitalization and the operations and procedures, which were performed during the hospitalization.

C. Medical Record Contents. The medical record staff shall ensure that each patient's medical records contain:

(1) accurate and adequate patient identification data;

(2) a concise statement of complaints, including the chief complaint, which led the patient to seek medical care and the date of onset and duration of each;

(3) a health history, containing a description of present illness, past history of illness and pertinent family and social history to be made part of the record within the first 24 hours after admission;

(4) a statement about the results of the physical examination, including all positive and negative findings resulting from an inventory of systems;

(5) the provisional diagnosis;

(6) all diagnostic and therapeutic orders;

(7) all clinical laboratory, x-ray reports and other diagnostic reports;

(8) consultation reports contain-

ing a written opinion by the consultant that reflects, when appropriate, an actual examination of the patient and the patient's medical records;

(9) except in an emergency, a current, thorough history and physical work-up shall be recorded in the medical record of every patient prior to surgery;

(10) an operative report describing techniques and findings written or dictated immediately after surgery; the completed operative report is authenticated by the surgeon and filed in the medical record as soon as possible after surgery or available electronically in the hospital information system; when the operative report is not placed in the medical record immediately after surgery, a progress note is entered immediately;

(11) a post operative documentation record of the patient's discharge from the post anesthesia care area;

(12) tissue reports, including a report of microscopic findings if hospital policies require that microscopic examination be done; if only microscopic examination is warranted, a statement that the tissue has been received and a microscopic description of the findings shall be provided by the laboratory and filed in the medical record;

(13) progress notes providing a chronological picture of the patient's progress sufficient to delineate the course and the results of treatment;

(14) a definitive final diagnosis including all relevant treatment and operative procedures performed expressed in the terminology of a recognized system of disease nomenclature;

(15) a discharge summary including the final diagnosis, the reason for hospitalization, the significant findings, the procedures performed, the condition of the patient on discharge and any specific instructions given the patient and/or family. A final progress note is acceptable when stay is less than 48 hours and in case of normal newborn infants and uncomplicated obstetrical deliveries;

(16) autopsy findings when an autopsy is performed; and

(17) for comprehensive inpatient programs the following information shall be present as well: rehabilitation evaluation including medical, psycho-social history and physical exam; rehabilitation plans including goals for treatment; documentation of patient care conferences held minimally every two weeks, or as indicated, by appropriate disciplines involved in the care and treatment of the patient, in which the patient's treatment and response to rehabilitation services shall be evaluated and modified as indicated.

D. Authentication. Only members of the hospital staff or other pro-

fessional personnel authorized by the hospital shall record and authenticate entries in the medical record. Documentation of medical staff participation in the care of the patient shall be evidenced by at least:

(1) the signature on the patient's health history as the required by medical staff by-laws and results of his or her physical examination;

(2) periodic progress notes or countersignatures as defined by the hospital rules and regulations;

(3) the surgeon's signature on the operative report; and

(4) the signature as required by medical staff by-laws on the face sheet and discharge summary.

E. Completion.

(1) Current records and those on discharged patients shall be completed promptly.

(2) If a patient is readmitted within 30 days for the same or related condition, there shall be a reference to the previous history with an interval note, and any pertinent changes in physical findings shall be recorded.

(3) All records of discharged patients shall be completed within a reasonable period of time specified in the medical staff by-laws, but not to exceed 30 days after discharge, excepting autopsy reports.

F. Maternity Patient Records.

(1) Prenatal findings: Except in an emergency, before a maternity patient may be admitted to a hospital, a legible copy of the prenatal history shall be submitted to the hospital's obstetrical staff. The prenatal history shall note complication, Rh determination and other matters essential to adequate care.

(2) Maternal medical record: Each obstetric patient shall have a complete hospital record, which shall include:

(a) patient identification, prenatal history and findings;

(b) the labor and delivery record, including anesthesia;

(c) medicine and treatment sheet, including nursing notes;

(d) any laboratory and x-rays reports;

(e) any medical consultant's notes; and

(f) an estimate of blood loss.

G. Newborn Medical Records. Each newborn patient shall have a complete hospital record which shall include:

(1) a record of pertinent material data, type of labor and delivery, and the condition of the infant at birth;

(2) a record of physical examinations;

(3) progress sheets to include medicine, treatment, weights, feeding and

temperatures; and

(4) the notes of any medical consultant.

H. Fetal Death. In the case of a fetal death, the weight and length of the fetus shall be recorded on the delivery record.

I. Authentication of all Entries.

(1) Documentation.

(a) All entries in medical records by hospital staff and medical staff shall be legible, permanently recorded, dated and authenticated with the name and title of the person making the entry.

(b) All orders shall be recorded and authenticated. All verbal and telephone orders shall be authenticated by the prescribing practitioner, or a practitioner authorized to sign on behalf of the prescribing physician, in writing within 72 hours.

(c) A rubber stamp reproduction of a person's signature or an electronic signature may be used instead of a handwritten signature, if: the stamp is used only by the person whose signature the stamp replicates, the facility possesses a statement signed by the person, certifying that only that person(s) shall possess and use the stamp.

(2) Symbols and abbreviations: Symbols and abbreviations may be used in medical records if approved by a written facility policy, which defines the symbols and abbreviations and controls their use. There shall be only one meaning per symbol.

[7.7.2.30 NMAC - Rp, 7.7.2.30 NMAC, 06-15-04; 7.7.2.30 NMAC - Rn, 7.7.2.29 NMAC & A, 03-15-06]

~~7.7.2.30~~ 7.7.2.31 LABORATORY SERVICES:

A. Services and Facilities.

(1) The extent and complexity of laboratory services shall be commensurate with the size, scope, and nature of the hospital and the needs of the medical staff.

(2) Necessary space, facilities and equipment to perform both the basic minimum and all other services shall be provided by the hospital either on-site or by contracts and services.

(3) All equipment shall be made to carry out adequate clinical laboratory examinations and services, as appropriate for the care of the patients. In the case of work performed, the original report or a legally reproduced copy of the report from the laboratory shall be contained in the medical record.

B. Availability.

(1) Laboratory services shall be available at all times, and there shall be a sufficient number of qualified laboratory testing personnel and support staff to per-

form promptly and efficiently the tests required of the pathology and medical laboratory services.

(2) Adequate provision shall be made for ensuring the availability of emergency laboratory services, either in the hospital or under arrangements with another laboratory. These services shall be available twenty-four (24) hours a day, seven days a week, including holidays, and shall include the referral of specimens potentially related to disaster and emergency to the scientific laboratory division of the New Mexico department of health for confirmation, or rejection, of that relationship, and the reporting of notifiable conditions to the office of epidemiology of the New Mexico department of health and to the local public health office.

(3) A hospital that has contracted for laboratory services is in compliance with this paragraph if the contracted services have a current CLIA certificate at the appropriate level of testing.

C. Personnel.

(1) A qualified medical technologist shall be a graduate of a medical technology program approved by a nationally recognized body or has documented equivalent education, training, and/or experience; a qualified medical lab technician shall be a graduate of a program approved by the federal department of health and human services.

(2) The laboratory may not perform procedures and tests that are outside the scope of training of laboratory personnel.

D. Records.

(1) Laboratory test records and reports may be destroyed four years after the date of the test with the exception of minor children whose records must be maintained until the age of majority plus one year.

(2) The laboratory director shall be responsible for the laboratory report.

(3) A mechanism by which the clinical laboratory report shall be authenticated by testing personnel shall be delineated in the laboratory services' policies and procedures.

(4) The laboratory shall have procedures for ensuring that all requests for tests are ordered in writing by individuals authorized by the medical staff.

(5) The hospital shall have available a copy of their current CLIA certificate or a verification of current CLIA certificate by contractor.

E. Anatomical Pathology.

(1) Pathologist.

(a) Anatomical pathology services shall be under the direct supervision of a pathologist. If it is on a consultative basis,

the hospital shall provide for, at minimum, monthly consultative visits by the pathologist. The pathologist must be available in person or electronically at all times.

(b) The pathologist shall participate in lab quality improvement and department conferences.

(c) The pathologist shall be responsible for establishing qualifications of pathology laboratory staff.

(d) An autopsy may be performed only by a pathologist, other qualified individuals qualified by the office of medical investigator or another qualified physician.

(2) Tissue examination.

(a) The medical staff and a pathologist shall determine which tissue specimens require macroscopic examination and which require both macroscopic and microscopic examinations.

(b) The hospital shall maintain an ongoing file of tissue slides and blocks, for a minimum of ten (10) years. Use of outside laboratory facilities for storage and maintenance of records, slides and blocks is permitted.

(c) If the hospital does not have a pathologist or otherwise qualified physician, there shall be a written plan for sending all tissues requiring examination to a pathologist outside the hospital.

(d) A log of all tissues sent outside the hospital for examination shall be maintained. Arrangements for tissue examinations done outside the hospital shall be made with a certified laboratory, or a laboratory approved for the federal CLIA program.

(e) Specimens shall be considered hazardous waste and shall be disposed of in a safe manner.

(3) Records.

(a) All reports of macroscopic and microscopic tissue examination must be authenticated by the pathologist or other qualified physician.

(b) Provisions shall be made for the prompt filing of examination results in the patient's medical record and for notification of the provider who requested the examination.

(c) The autopsy report shall be distributed to the provider and shall be made a part of the patient's record.

(d) Duplicate records of the examination reports shall be kept in the laboratory and maintained in a manner, which permits ready identification and accessibility for a minimum of two years.

(4) Blood Bank.

(a) The blood bank shall be operated according to standards set by the accrediting agency; either the FDA or CLIA, whichever is more stringent.

(b) Records shall be kept on file in the laboratory service and in the patient

medical records according to CLIA guidelines to indicate the receipt and disposition of all blood and blood products provided to patients in the hospital.

(5) Laboratory Certification. The hospital laboratory shall successfully participate in proficiency testing programs that are offered or approved by CMS in those specialties for which the laboratory offers services. Provisions shall be made for an acceptable quality control program covering all types of analysis performed by the laboratory and any other department performing any other laboratory tests.

[7.7.2.31 NMAC - Rp, 7.7.2.31 NMAC, 06-15-04; 7.7.2.31 NMAC - Rn, 7.7.2.30 NMAC & A, 03-15-06]

~~[7.7.2.31]~~ 7.7.2.32 RADIOLOGICAL SERVICES:

A. Diagnostic X-Ray Services.

(1) Requirement. The hospital shall make diagnostic x-ray services available. These services shall meet professionally approved standards for safety and the qualifications of personnel in addition to the requirements set out in this subsection.

(2) Location. The hospital shall have diagnostic x-ray facilities available in the hospital building proper or clinic or medical facility that is readily accessible to the hospital's patients, physicians and staff.

(3) Policies. Written policies and procedures shall be developed and maintained by the person responsible for the service in consultation with other appropriate health professionals and administration. The governing body shall approve the policies. The administrative and medical staff shall approve the procedures where appropriate.

(4) Safety.

(a) The radiological service shall be free of hazards for patients and personnel.

(b) Proper safety precautions shall be maintained against fire and explosion hazards, electrical hazards and radiation hazards.

(c) Hospital x-ray facilities shall be inspected by a qualified radiation physicist or by the New Mexico environment department radiation consultant at least once every two years. Hazards identified by inspections shall be properly and promptly corrected.

(d) Radiological equipment and radiation services shall conform with the requirements of the Radiation Protection Act, Sections 74-3-1 through 74-3-16, NMSA 1978.

(e) Attention shall be paid to current safety design and good operating procedures for use of fluoroscopes. Records shall be maintained of the output of all

fluoroscopes.

(f) Policies based on medical staff recommendations shall be established for the administration of the application and removal of radium element, its disintegration products and other radioactive isotopes.

(5) Personnel.

(a) A physician shall have overall responsibility for the radiological service. This physician shall be certified or eligible for certification by the American board of radiology. If such a radiologist is not available on a full-time or regular part-time basis, a physician, with training and experience in radiology, may administer the service. In this circumstance, a radiologist, qualified as above, shall provide consultation services at suitable intervals to assure high quality service.

(b) A sufficient number of personnel capable of supervising and carrying out the radiological services shall be provided. Their training must conform to the requirements set out in the Medical Radiation Health and Safety Act, Sections 61-14E-1 through 61-15E-12, NMSA 1978 and regulations promulgated by the New Mexico environment department titled Radiologic Technology Certification, [20-NMAC 3-2] 20.3.20 NMAC.

(c) The interpretation of radiological examinations shall be made by physicians qualified in the field.

(d) The hospital shall have a board-certified radiologist, full-time, part-time or on a consulting basis, who is qualified to interpret films that require specialized knowledge for accurate reading.

(e) A technologist shall be on duty or on call at all times.

(f) Only personnel designated as qualified by the state radiology technologist licensing body may use the x-ray apparatus, and only similarly designated personnel may apply and remove the radium element, its disintegration products and radioactive isotopes. Only properly trained persons authorized by the medical director of the radiological service may operate fluoroscopic equipment.

(6) Records.

(a) Authenticated radiological reports shall be filed in the patient's medical record.

(b) Written orders by the attending physician or other individual authorized by medical staff for an x-ray examination shall contain a concise statement of the reason for the examination.

(c) Interpretations of x-rays shall be written or dictated and signed by a qualified physician or other individual authorized by the medical staff.

(d) Copies of interpretive findings shall be retained in the medical record for at least 10 years. Scans and other image records shall be retained for at least four

years.

B. Therapeutic X-Rays

Services. If therapeutic x-ray services are provided, they shall meet professionally approved standards for safety and for qualifications of personnel. The physician in charge shall be appropriately qualified. Only a physician qualified by training and experience may prescribe radiotherapy treatments.

[7.7.2.32 NMAC - Rp, 7.7.2.32 NMAC, 06-15-04; 7.7.2.32 NMAC - Rn, 7.7.2.31 NMAC, 03-15-06]

~~[7.7.2.32]~~ **7.7.2.33 NUCLEAR MEDICINE SERVICES:**

A. Nuclear Medicine Service.

(1) Requirement. If a hospital provides nuclear medicine services, the services shall meet the needs of the hospital's patients in accordance with acceptable standards of professional practice.

(2) Organization and Staffing:

(a) the organization of the nuclear medicine services shall be appropriate for the scope and complexity of the services offered;

(b) there shall be a physician director who is qualified in nuclear medicine to be responsible for the nuclear medicine service;

(c) the qualifications, education, training, functions and legal responsibilities of nuclear medicine personnel shall be specified by the director of the service and approved by the medical staff and chief executive officer/administrator based upon the assurance that personnel are appropriately licensed by the state radiology technologist licensing body; and

(d) all persons who administer radiopharmaceuticals shall be approved by the medical staff and in accordance with applicable federal, state and local laws; the numbers and types of personnel assigned to nuclear medicine shall be appropriate for the scope and complexity of the services offered.

(3) Location. Nuclear medicine services shall be provided in an area of the hospital that is adequately shielded.

(4) Radioactive. Radioactive materials shall be prepared, labeled, used, transported, stored and disposed of in accordance with applicable regulations, i.e. the Radiation Protection Act 74-1-9, 74-3-5, 74-3-9, NMSA 1974, and all regulations promulgated thereunder.

(5) Equipment and supplies.

(a) Equipment and supplies shall be appropriate for the types of nuclear medicine services offered and shall be maintained for safe and efficient performance.

(b) All equipment shall be maintained in safe operating condition and shall be inspected, tested and calibrated at least

annually by a radiation or health physicist.

(6) Records.

(a) Authenticated and dated reports of nuclear medicine interpretations, consultations and therapy shall be made part of the patient's medical record and copies shall be retained by the service.

(b) Records shall note the amount of radiopharmaceuticals administered, the identity of the recipient, the supplier and lot number and the date of therapy.

(c) The hospital shall provide for monitoring the staff's exposure to radiation. The cumulative radiation exposure for each staff member shall be recorded in the service's records at least monthly.

(d) Records of the receipt and disposition of radiopharmaceuticals shall be maintained. Documentation of instrument performance and records of inspection shall be retained in the service.

B. Mobile Nuclear

Medicine Services. The use of mobile nuclear medicine services by a facility to meet the diagnostic needs of its patients shall be subject to approval of the medical staff and the chief executive officer/administrator. The services offered by the mobile nuclear medicine unit shall comply with all applicable rules of this section.

[7.7.2.33 NMAC - Rp, 7.7.2.33 NMAC, 06-15-04; 7.7.2.33 NMAC - Rn, 7.7.2.32 NMAC, 03-15-06]

~~[7.7.2.33]~~ **7.7.2.34 CLINICAL SERVICES:**

A. Policies and

Procedures. Hospitals which have surgery, anesthesia, dental, maternity, and other services which may be optional services shall have effective written policies and procedures, in addition to those set forth under these requirements, relating to the staffing and functions of each services in order to protect the health and safety of the patients.

B. Surgery.

(1) Policies.

(a) Surgical privileges shall be delineated for each of the medical staff performing surgery in accordance with the individual's competencies and a copy shall be available to operating room supervisor.

(b) The surgical service shall have a written policy to ensure patient safety if a member of the surgical team becomes non-functional.

(c) The surgical service shall have the ability to retrieve information needed for infection surveillance, identification of personnel who assisted at operative procedures, and the compiling of needed data.

(d) There shall be adequate provision for immediate post-operative care. A patient may be directly discharged from post-anesthetic recovery status, upon direction by an anesthesiologist, another quali-

fied physician or a certified registered nurse anesthetist.

(e) A procedure for the identification, investigation, and elimination of nosocomial infection associated with surgical services. There shall be a written procedure for investigating unusual levels of infection.

(f) Rules and policies relating to the operating rooms shall be available and posted in appropriate locations inside and outside the operating rooms.

(g) The hospital shall have policies which clearly identify the patient, the site, and/or side of the procedure.

(h) Prior to commencing surgery the person responsible for administering anesthesia, or the surgeon must verify the patient's identity, the site and/or side of the body to be operated on, and ascertain that a record of the following appears in the patient's medical record: an interval medical history and physical examination performed and recorded according to hospital policy, appropriate screening tests, based on the needs of the patient, accomplished and recorded according to hospital policy, a properly executed informed consent, in writing for the contemplated surgical procedure, except in emergencies.

(2) Supervision. A professional registered nurse who is qualified by training and experience to supervise the operating rooms shall supervise the operating rooms.

(3) Environment. If explosive gases are used, the services shall have appropriate policies, in writing, for safe use of these gases.

C. Anesthesia.

(1) Policies.

(a) The anesthesia service shall have effective written policies and procedures to protect the health and safety of all patients.

(b) If explosive gases are used, the service shall have appropriate policies, in writing, for safe use of these gases.

(2) Anesthesia use requirements.

(a) Every surgical patient shall have a pre-anesthetic assessment, intra-operative monitoring, and post-anesthesia assessment prior to discharge from a post-anesthesia level of care, according to hospital policy.

(b) In hospitals where there is no organized anesthesia service, the surgical service shall assume the responsibility for establishing general policies and supervising the administration of anesthetics.

(c) Anesthesia shall be administered only by a licensed practitioner permitted by the state to administer anesthetics.

(d) If a general or regional anesthetic is used and an MD or DO is not a member of the operating team, an MD or DO shall be immediately available on the hospital premises.

D. Dental Service. All dental services shall meet the following requirements.

(1) Dentists performing surgical procedures at the hospital shall be members of the medical staff.

(2) Surgical procedures performed by dentists shall be under the overall supervision of an M.D. or D.O., unless the dentist is a licensed oral surgeon.

(3) There shall be policies for referral of patients in need of dental services. These policies will be readily available to all emergency care staff.

E. Maternity.

(1) Definitions: In this subsection.

(a) "Neonatal" means pertaining to the first 27 days following birth.

(b) "Oxytocics" means any of several drugs that stimulate the smooth muscle of the uterus to contract and that are used to initiate labor at term.

(c) "Perinatal" means pertaining to the mother, fetus or infant, in anticipation of and during delivery, and in the first post partum week.

(d) "Perinatal care center" means an organized hospital-based health care service which includes a high-risk maternity service and a neonatal intensive care unit capable of providing case management for the most serious types of maternal, fetal and neonatal illness and abnormalities.

(2) Reporting numbers of beds and bassinets. The number of beds and bassinets for maternity patients and newborn infants, shall be designated by the hospital and reported to the licensing authority.

(3) Maternity admission requirements. The hospital shall have written policies regarding standards of practice for maternity and non-maternity patients who may be admitted to the maternity unit.

(4) High risk infants. Each maternity service shall have adequate facilities, personnel, equipment and support services for the care of high-risk infants, including premature infants, or a written plan for prompt transfer of these infants to a recognized intensive infant care or perinatal care center.

(5) Institutional transfer of infants.

(a) Written policies and procedures for inter-hospital transfer of perinatal and neonatal patients shall be established by hospitals which are involved in the transfer of these patients.

(b) A perinatal care center or high-risk maternity service and the sending hospital shall jointly develop policies and procedures for the transport of high-risk maternity patients.

(c) Policies, personnel and equipment for the transfer of infants from one

hospital to another shall be available to each hospital's maternity service. The proper execution of transfer is a joint responsibility of the sending and receiving hospitals.

(6) Personnel.

(a) The labor, delivery, postpartum and nursery areas of maternity units shall have available the continuous services and supervision of a professional registered nurse for whom there shall be documentation of qualifications to care for women and infants during labor, delivery and in the postpartum period.

(b) When a maternity unit requires additional staff on an emergency basis, the needed personnel may be transferred from another service if they meet the infection control criteria.

(c) The service shall have written policies that state which emergency procedures may be initiated by the professional registered nurse in the maternity service.

(7) Infection control.

(a) The infection surveillance and control program in the maternity service shall be integrated with that of the entire hospital.

(b) Surgery on non-maternity patients may not be performed in the delivery suite, except in emergencies.

(c) Hospitals unable to effectively isolate and care for infants shall have an approved written plan for transferring the infants to hospitals where the necessary isolation and care can be provided.

(8) Labor and delivery.

(a) The hospital shall have written policies and procedures that specify who is responsible for, and what is to be documented for, the care of the patient in labor and delivery, including alternative birthing rooms.

(b) Equipment that is needed for normal delivery and the management of complications and emergencies occurring with either the mother or infant shall be provided and maintained in the labor and delivery unit. The medical staff and the nursing staff shall determine the items needed.

(c) The facility shall have policies for the performing of newborn genetic screening.

(d) Written standing orders shall exist allowing nurses qualified by documented training and experience to discontinue the oxytocic drip should circumstances warrant discontinuance.

(e) The hospital shall be responsible for proper identification of newborns in its care.

(9) Postpartum care. The hospital shall have written policies and procedures for nursing assessments of the postpartum patient during the entire postpartum course.

(10) Newborn nursery and the care of newborns.

(a) Oxygen, medical air and suction shall be readily available to every nursery.

(b) Hospitals that may require special formula preparation shall develop appropriate written policies and procedures.

(c) Newborn infants shall be screened for hearing sensitivity prior to being discharged.

(d) In the event that a newborn infant is brought to the hospital after birth and has not received a hearing sensitivity screening, the attending physician, nurse, audiologist or authorized staff shall arrange for a hearing sensitivity screening to be performed by a program approved by children's medical services of the department of health.

(e) The hospital shall have effective written policies and procedures to assure that newborn infants, who are brought to the hospital for emergency services, receive a hearing sensitivity screening.

(f) Documentation of the hearing sensitivity screening shall be entered into the infant's medical record as subject to Subsection G of 7.7.2.29 NMAC.

(g) Parents or the legally authorized person may waive the requirements for the newborn hearing sensitivity screening in writing if they object to the screening on the grounds that it conflicts with their religious beliefs. The waiver for the hearing screening shall be after the parents or legally authorized person have been provided with both written and oral explanations by the infant's physician so that they may make an informed decision. The document of waiver shall be placed in the newborn infant's medical record.

(h) Parent(s) who have lawful custody of the infant screened for hearing sensitivity shall be notified of the test results.

(i) Hospitals that permit minor siblings to visit the maternity unit shall have written policies and procedures detailing this practice.

(11) Discharge of infants.

(a) An infant may be discharged only to a parent who has lawful custody of the infant or to an individual who is legally authorized to receive the infant. If the infant is discharged to a legally authorized individual, that individual shall provide identification and, if applicable, the identification of the agency the individual represents.

(b) The hospital shall record the identity of the parent or legally authorized individual who received the infant in the infant's medical record.

[7.7.2.34 NMAC - Rp, 7.7.2.34 NMAC; 06-15-04; 7.7.2.34 NMAC - Rn, 7.7.2.33 NMAC, 03-15-06]

[7.7.2.34] 7.7.2.35 REHABILITATION SERVICES:

A. Organization.

(1) A Hospital may have either inclusive rehabilitation services or separate services for physical therapy, occupational therapy, speech language pathology, recreational therapy or audiology.

(2) Rehabilitation services shall have written policies and procedures governing the management and care of patients.

(3) The services provided on each service shall be given by or provided under the supervision of a qualified professional therapist.

(4) Facility space and equipment for rehabilitation services shall be adequate to meet the needs of patients receiving care.

B. Orders. Physical therapy, occupational therapy, speech language pathology therapy, Recreational therapy, and/or audiology services shall be provided in accordance with orders of practitioners who are authorized.

C. Additional Requirements for Separate Rehabilitation Services.

(1) Definition: A rehabilitation unit or facility is defined as a designated unit, or hospital that primarily provides physiological rehabilitation services to inpatients and/or outpatients.

(2) If the facility maintains a separate rehabilitation unit, or hospital, there shall be medical directorship by an individual who has the necessary knowledge, experience and capabilities to direct the rehabilitation services. The medical director shall be a qualified professional physician.

(3) Additional treatment plan and staffing requirements.

(a) The rehabilitation unit, or hospital, shall have sufficient staff to provide an optimal program for those who require rehabilitation services. Periodic evaluations of staffing requirements based on patients serviced shall be undertaken to assure rehabilitation needs can be met.

(b) The rehabilitation staff shall plan, implement and modify written individualized treatment plans for patients based on their intake assessment.

(c) Nursing services shall be provided under the direction of a professional registered nurse with background and/or training in rehabilitation nursing. Professional registered nurses who are qualified in the care of rehabilitation nursing services shall supervise nursing care.

(d) Psychological services shall be provided by or given under the supervision of, an appropriately licensed psychologist or psychiatrist. There shall be a sufficient number of psychologists, consultants and or support personnel to provide optimal patient and/or family evaluations and treatment.

(e) Social work services shall be provided by a sufficient number of qualified

social work staff to provide optimal patient and family consultation related to social work rehabilitation services and indicated community resource planning.

(f) Therapy services staff shall be sufficient in number and have sufficient support personnel to provide optimal assessments and treatment(s) to patients served.

[7.7.2.35 NMAC - Rp, 7.7.2.35 NMAC, 06-15-04; 7.7.2.35 NMAC - Rn, 7.7.2.34 NMAC, 03-15-06]

[7.7.2.35] 7.7.2.36 RESPIRATORY CARE SERVICES:

A. Direction. If respiratory care services are offered by the hospital, the service shall be under the medical direction of a qualified physician.

B. Policies and Procedures. Respiratory care services shall be provided in accordance with written policies and procedures that shall be approved by the medical staff. The policies and procedures shall address at a minimum:

(1) assembly and operation of mechanical aids to ventilation;

(2) management of adverse reactions to respiratory care services;

(3) administration of medications in accordance with physicians' orders;

(4) personnel who may perform specific procedures, under what circumstances and under what degree of supervision; and

(5) procurement, handling, storage and dispensing of therapeutic gases.

C. Personnel. Respiratory care services shall be provided by personnel qualified by education, training, experience and demonstrated competence.

D. Physicians' Orders. Respiratory care services shall be provided in accordance with the orders of a physician. The staff person authorized to take orders shall transcribe oral orders given by a physician into the medical record.

E. Oxygen. Oxygen monitoring equipment, including oxygen analyzers, shall be available and shall be checked for proper function prior to use but at least daily. Oxygen concentrations shall be documented. There shall be a written policy, which states how frequently oxygen humidifiers are to be cleaned.

[7.7.2.36 NMAC - Rp, 7.7.2.36 NMAC, 06-15-04; 7.7.2.36 NMAC - Rn, 7.7.2.35 NMAC, 03-15-06]

[7.7.2.36] 7.7.2.37 OUTPATIENT SERVICES:

A. Medical Direction. If outpatient services are offered by the hospital, the services shall be under the direction of a qualified member of the medical staff.

B. Administration.

(1) The outpatient service shall be organized into sections or clinics, the number of which shall depend on the size and the degree of departmentalization of the medical staff, the available facilities and the needs of the patients for whom it accepts responsibility.

(2) Outpatient clinics shall be coordinated with corresponding inpatient services.

(3) On their initial visit to the service, patients shall receive an appropriate health assessment with follow-up as indicated.

C. Personnel.

(1) The outpatient services shall have adequate numbers of qualified personnel.

(2) A professional registered nurse shall be responsible for the nursing care of the outpatient service.

D. Facilities.

(1) Facilities shall be provided to ensure that the outpatient service is operated efficiently and to protect the health and safety of the patients.

(2) The number of examination and treatment rooms shall be adequate in relation to the volume and nature of work performed.

(3) Suitable facilities for necessary laboratory and other diagnostic tests shall be available either through the hospital or by arrangement with an independent CLIA certified laboratory.

[7.7.2.37 NMAC - Rp, 7.7.2.37 NMAC, 06-15-04; 7.7.2.37 NMAC - Rn, 7.7.2.36 NMAC, 03-15-06]

[7.7.2.37] 7.7.2.38 EMERGENCY SERVICES:

A. Minimum Care Requirements. Acute-care or limited services hospitals must provide an area in the facility with adequate space and emergency equipment needed to treat emergency patients. Written policies for the care of such patients must be readily available to all patient care staff.

B. Distinct Emergency Service. If the hospital has a distinct emergency service:

(1) the emergency service shall be directed by personnel who are qualified by training and experience to direct the emergency service and shall be integrated with other services of the hospital;

(2) the policies and procedures governing medical care provided by the emergency service shall be established by, and are a continuing responsibility of, the medical staff;

(3) emergency services shall be supervised by a member of the medical staff, and nursing functions shall be the

responsibility of a professional registered nurse;

(4) the hospital's emergency services shall be coordinated with local / state / federal mass casualty plans and

(5) written policies and procedures shall be established prescribing a course of action, including policies for transferring a patient to an appropriate facility when the patient's medical status indicates the need for emergency care which the hospital cannot provide, to be followed in the care of persons who:

(a) manifest severe emotional disturbances;

(b) are under the influence of alcohol or other drugs;

(c) are victims of suspected abuse or are victims of other suspected criminal acts;

(d) have a contagious disease;

(e) have been contaminated by hazardous, chemical, biological or radioactive materials;

(f) are diagnosed dead on arrival;

or
(g) present other conditions requiring special directions regarding action to be taken.

(6) A hospital that provides emergency care for sexual assault survivors shall:

(a) provide each sexual assault survivor with medically and factually accurate and

(b) objective written and oral information about emergency contraception as described in their policies and procedures;

(c) orally and in writing inform each sexual assault survivor for her option to be provided emergency contraception at the hospital; and

(d) provide emergency contraception at the hospital to each sexual assault survivor who requests it and document it in the patient's medical record.

(7) The provision of emergency contraception pills shall include the initial dose that the sexual assault survivor can take at the hospital as well as the subsequent dose that the sexual assault survivor may self-administer 12 hours following the initial dose or in accordance with accepted standards of practice for the administration of emergency contraception.

(8) A communications system employing telephone, radiotelephone or similar means shall be in use to establish and maintain contact with the police department, emergency medical services, rescue squads and other emergency services of the community.

(9) A list of emergency referral services shall be available in the basic emergency service. This list shall include the

name, address and telephone number of such services as:

(a) police department;

(b) rape or domestic crisis center;

(c) burn center;

(d) drug abuse center;

(e) New Mexico poison [control information] center;

(f) suicide prevention center;

(g) [director of the state public health division or his designee;] the office of epidemiology of the New Mexico department of health;

(h) local public health [department] office;

(i) clergy;

(j) emergency psychiatric service;

(k) chronic dialysis service;

(l) renal transplant center;

(m) intensive care newborn nursery;

(n) radiation accident management service;

(o) ambulance transport and rescue service, including military resources;

(p) county coroner or medical examiner;

(q) hazardous materials management service;

(r) anti-venom service;

(s) emergency and dental service;

(t) local emergency operations center.

(10) The hospital shall have the following service capabilities:

(a) adequate monitoring and therapeutic equipment;

(b) laboratory service shall be capable of providing the necessary support for the emergency service;

(c) radiological service shall be capable of providing the necessary support of the emergency service;

(d) services shall be available for life threatening situations adequate for the size and scope of the facility and staff;

(e) the hospital shall have readily available the services of a blood bank containing common types of blood and blood derivatives.

C. Physical Environment.

(1) The emergency service shall be provided with the facilities, equipment, drugs, supplies and space needed for prompt diagnosis and emergency treatment.

(2) **Facilities** for the emergency service shall be separate and independent of the operating room.

(3) The location of the emergency service shall be in close proximity to an exterior entrance of the hospital.

D. Personnel.

(1) There shall be sufficient medical and nursing personnel available for the emergency service at all times. All medical

and nursing personnel assigned to emergency services shall be trained in cardiopulmonary resuscitation.

(2) The medical staff shall ensure that qualified members of the medical staff are available at all times for the emergency service, either on duty or on call, and that an authorized medical staff member is responsible for all patients who arrive for treatment in the emergency service.

(3) If unable to reach the patient within 15 minutes, the physician or a licensed independent practitioner shall provide specific instructions to the emergency staff on duty if emergency measures are necessary. These instructions may take the form of written protocols approved by the medical staff.

E. A sufficient number of professional registered nurses qualified by training and/or experience to work in emergency services shall be available to deal with the number and severity of emergency service cases.

F. The hospital shall ensure that all personnel who provide care to sexual assault survivors have documented training in the provision of medically and factually accurate and objective information about emergency contraception within 60 days of employment.

G. Complaints.

(1) Complaints of failure to provide services required by the Sexual Assault Survivors Emergency Care Act may be filed with the department.

(2) The department shall investigate every complaint it receives regarding failure of a hospital to provide services required by the Sexual Assault Survivors Emergency Care Act to determine the action to be taken to satisfy the complaint.

(3) If the department determines that a hospital has failed to provide the services required in the Sexual Assault Survivors Emergency Care Act, the department shall:

(a) issue a written warning to the hospital upon receipt of a complaint that the hospital is not providing the services required by the Sexual Assault Survivors Emergency Care Act; and

(b) based on the department's investigation of the first complaint, require the hospital to correct the deficiency leading to the complaint.

(4) If after the issuance of a written warning to the hospital pursuant to Subsection D of this section, the department finds that the hospital has failed to provide services required by the Sexual Assault Survivors Emergency Care Act, the department shall, for a second through fifth complaint, impose on the hospital a fine of one thousand dollars (\$1,000):

(a) per sexual assault survivor who is found by the department to have

been denied medically and factually accurate and objective information about emergency contraception or who is not offered or provided emergency contraception; or

(b) per month from the date of the complaint alleging noncompliance until the hospital provides training pursuant to the rules of the department.

(5) For the sixth and subsequent complaint against the same hospital if the department finds the hospital has failed to provide services required by the Sexual Assault Survivors Emergency Care Act, the department shall impose an intermediate sanction pursuant to Section 24-1-5.2 NMSA 1978 or suspend or revoke the license of the hospital issued pursuant to the Public Health Act.

H. Medical Records.

(1) Adequate medical records to permit continuity of care after provision of emergency services shall be maintained on all patients. The emergency room patient record shall contain:

- (a) patient identification;
- (b) history of disease or injury;
- (c) physical findings;
- (d) laboratory and x-ray reports,

if any;

- (e) diagnosis;
- (f) record of treatment;
- (g) disposition of the case;
- (h) appropriate time notations,

including time of the patient's arrival, time of physician notification, time of treatment, including administration of medications, time of patient discharge or transfer from the service or time of death.

(2) Where appropriate, medical records of emergency services shall be integrated with those of the inpatient and outpatient services.

I. Emergency Committee. An emergency services committee composed of physician, professional registered nurses and other appropriate hospital staff shall review emergency services and medical records for appropriateness of patient care on at least a quarterly basis. The committee shall make appropriate recommendations to the medical staff and hospital administrative staff based on its findings. This review may be part of a hospital's overall quality improvement program. Minutes of these meetings shall be maintained for a one year period.

J. Equipment and Supplies. All equipment and supplies necessary for life support shall be available, including but not limited to, airway control and ventilation equipment, suction devices, cardiac monitor, defibrillator, pacemaker capability, apparatus to establish central venous pressure monitoring, intravenous fluids and administration devices.

[7.7.2.38 NMAC - Rp, 7.7.2.38 NMAC, 06-15-04; 7.7.2.38 NMAC - Rn, 7.7.2.37

NMAC & A, 03-15-06]

~~[7.7.2.38]~~ **7.7.2.39 SOCIAL WORK SERVICES:**

A. Organized Service. If the healthcare system provides social work services there should be corresponding written policies and procedures governing the scope and provision of services. If the system does not have employed providers for social work services, then they must be obtained via consultation with outside sources.

B. Personnel.

(1) Direction. Social work services shall be directed by personnel who have:

(a) a master's degree in social work from a graduate school of social work accredited by the council on social work education, and has one year of social work experience in a health care setting; or

(b) a bachelor's degree in social work, sociology or psychology; meets the national association of social workers standards of membership; and has one year of social work experience in a health care setting.

(2) Staff. The social work services staff, in addition to the service director, may include social workers, caseworkers and social work assistants at various levels of social work training and experience.

(3) Number of Staff. There shall be a sufficient number of social work services staff to carry out the purpose and functions of the service.

C. Service. The social work services shall be integrated with other services of the hospital. Staff shall participate, as appropriate, in patient rounds, medical staff seminars, nursing staff conferences, and in conferences with individual physicians, nurses, and other personnel concerned with the care of a patient and the patient's family.

D. Functions. Social work services shall address the psychosocial needs of the patients, their families and others designated by the patient as these relate to health care. Services shall be clearly documented in the record.

E. Environment. The facilities or social work services staff shall provide privacy interviews with patients, their family members and others designated by the patients.

F. Quality Improvement. The service shall be part of the hospital's performance improvement program.

[7.7.2.39 NMAC - Rp, 7.7.2.39 NMAC, 06-15-04; 7.7.2.39 NMAC - Rn, 7.7.2.38 NMAC, 03-15-06]

~~[7.7.2.39]~~ **7.7.2.40 ADDITIONAL REQUIREMENTS FOR PSYCHIATRIC HOSPITALS:**

A. Additional Medical

Record Requirements. The medical records maintained by a psychiatric hospital shall document the degree and intensity of the treatment provided to individuals who are furnished services by the facility. A patient's medical record shall contain:

(1) identification data, including the patient's legal status;

(2) the reason for treatment or chief complaint in the words of the patient, when possible, as well as observations or concerns expressed by others;

(3) the psychiatric evaluation, including medical history containing a record of mental status and noting the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functions, memory functioning, orientation and an inventory of the patient's personality assets recorded in descriptive fashion;

(4) social services records, including reports of interviews with patients, family members and others and an assessment of home plans, family attitudes and community resource contacts as well as social history;

(5) a comprehensive treatment plan based on an inventory of the patient's strengths and disabilities, which shall include:

(a) at least one diagnosis;
(b) short-term and long-range goals;

(c) the specific treatment modalities used; and

(d) the responsibilities of each member of the treatment team.

(6) staff shall plan, implement and revise, as indicated, a written, individualized treatment program for each patient based on:

(a) the degree of psychological impairment and appropriate measures to be taken to relieve treatable distress and to compensate for nonreversible impairments;

(b) the patient's capacity for social interaction;

(c) environmental and physical limitations such as seclusion room or restraints, required to safeguard the individual's health and safety with an appropriate plan of care; and

(d) the individual's potential for discharge and successful care management on an outpatient basis.

(7) the documentation of all active therapeutic efforts and interventions;

(8) progress notes related to treatment needs and the treatment plan are reviewed, revised and recorded at least weekly as the status of the patient requires by the physician, nurse, social worker and staff from other appropriate disciplines involved in active treatment modalities, as indicated by the patient's condition; and

(9) discharge information, including:

(a) recommendations from appropriate services concerning follow-up care; and

(b) at least one diagnosis.

B. Additional Treatment Plan and Staffing Requirements.

(1) The hospital shall have enough staff with appropriate qualifications to carry out an active plan of psychiatric treatment for individuals who are furnished services in the facility.

(2) The treatment of psychiatric inpatients shall be under the supervision of a qualified physician who shall provide for taking an active role in an intensive treatment program.

(3) If non-psychiatric medical and surgical diagnostic and treatment services are not available within the facility, qualified consultants or attending physicians shall be immediately available if a patient should need this attention, or an adequate arrangement shall be in place for immediate transfer of the patient to an acute-care hospital.

(4) Nursing services shall be under the supervision of a professional registered nurse qualified to care for psychiatric patients and, by demonstrated competence, to participate in interdisciplinary formulation of individual treatment plans, to give skilled nursing care and therapy, and to direct, supervise and educate others who assist in implementing the nursing component of each patient's treatment plan.

(5) Professional registered nurses and other nursing personnel shall participate in inter-disciplinary meetings affecting the planning and implementation of treatment plans for patients, including diagnostic conferences, treatment planning sessions and meetings held to consider alternative facilities and community resources.

(6) Psychological services shall be under the supervision of a psychologist licensed under the Professional Psychologists Act, Section 61-9-1 through 61-9-18 NMSA 1978. There shall be enough psychologists, consultants and support personnel qualified to carry out their duties to:

(a) assist in essential diagnostic formulations;

(b) participate in program development and evaluation;

(c) participate in therapeutic interventions and in interdisciplinary conferences and meetings held to establish diagnoses, goals and treatment programs.

(7) The number of social work staff qualified to carry out their duties shall be adequate for the hospital to meet the specific needs of individuals patients and their families and develop community resources

and for consultation to other staff and community agencies. The social work staff shall:

(a) provide psychosocial data for diagnosis and treatment planning;

(b) provide direct therapeutic services; and

(c) participate in interdisciplinary conferences and meetings on diagnostic formulation and treatment planning, including identification and use of alternative facilities and community resources.

(8) The number of qualified therapists and therapist assistants shall be sufficient to provide needed therapeutic activities, including, when appropriate, occupational, recreational, and physical therapy, to ensure that appropriate treatment is provided to each patient.

(9) The total number of rehabilitation personnel, including consultants, shall be sufficient to permit appropriate representation and participation in inter-disciplinary conferences and meetings, including diagnostic conferences, which affect the planning and implementation of activity and rehabilitation programs.

[7.7.2.40 NMAC - Rp, 7.7.2.40 NMAC, 06-15-04; 7.7.2.40 NMAC - Rn, 7.7.2.39 NMAC, 03-15-06]

~~[7.7.2.40]~~ **7.7.2.41 PHYSICAL ENVIRONMENT:**

A. General. The buildings of the hospital shall be constructed and maintained so that they are functional for diagnosis and treatment and for the delivery of the hospital services appropriate to the needs of the community and with due regard for protecting the life, health and safety of the patients and staff. The provisions of this section apply to all new, remodeled and existing construction unless otherwise noted.

B. Definitions in ~~[7.7.2.41 NMAC]~~ 7.7.2.41 NMAC.

(1) "Building, existing" means a building erected prior to the adoption of this ~~[regulation]~~ requirement, or one for which a legal building permit has been issued.

(2) "Existing construction" means a building, which is in place or is being constructed with plans approved by the department prior to the effective date of this chapter.

(3) "Full-term nursery" means an area in the hospital designated for the care of infants who are born following a full-term pregnancy and without complications, until discharged to a parent or other legally authorized person.

(4) "Intermediate nursery" means an area in the hospital designated for the care of infants immediately following birth who require observation due to complications, and for the care of infants who require

observation following placement in the critical care nursery, until discharged to a parent or other legally authorized person.

(5) "Life safety code" means the standard adopted by the national fire protection association (NFPA) known as NFPA 101 life safety code.

(6) "New construction" means construction for the first time of any building or addition or remodeling to an existing building, the plans for which are approved after the effective date of this chapter.

(7) "Remodeling" means to make over or rebuild any portion of an existing building or structure and thereby modify its structure, structural strength, fire hazard character, exits, heating and ventilation systems, electrical system or internal circulation, as previously approved by the department. Where exterior walls are in place but interior walls are not in place at the time of the effective date of this chapter, construction of interior walls shall be considered remodeling. "Remodeling" does not include repairs necessary for the maintenance of a building or structure.

(8) "Special care unit" means an organized health care service that combines specialized facilities and staff for the intensive care and management of patients in a crisis or potential crisis state. "Special care units" include psychiatric special care, coronary care, surgical intensive care, medical intensive care and burn units, but do not include post-obstetrical or post-surgical recovery units or neonatal intensive care units.

C. Approvals. The hospital shall keep all documentation of inspections on file in the hospital following any inspections by state and local authorities for a period of five years.

D. Fire Protection.

(1) Basic Responsibility: The hospital shall provide fire protection adequate to ensure the safety of patients, staff and others on the hospital's premises. Necessary safeguards such as extinguishers, sprinkling and detection devices, fire and smoke barriers, and ventilation control barriers shall be installed and maintained to ensure rapid and effective fire and smoke control.

(2) New Construction: Any new construction or remodeling shall meet the applicable provisions of the current edition of the building code, fire code, life safety code, and AIA guidelines for hospitals and health care facilities.

(3) Existing Facilities: Any existing hospital shall be considered to have met the requirements of this subsection if, prior to the promulgation of this chapter, the hospital complied with and continues to comply with the applicable provisions of the 1967, 1973 or the current edition of the life safety code, with or without waivers.

(4) Equivalent Compliance: Any

existing facility that does not meet all requirements of the applicable life safety code may be considered in compliance with life safety code if the facility achieves a passing score on the fire safety evaluation system (FSSES) developed by the U.S. department of commerce, national bureau of standards, to establish safety equivalencies under the life safety code.

E. General Construction.

(1) Prior to any construction, one copy of schematic plans shall be submitted to the licensing authority for review and preliminary approval.

(2) Before construction is started, one copy of final plans and specifications which, are used for bidding purposes shall be submitted to the licensing authority for review and approval. Plans must be prepared, sealed, signed and dated by an architect registered in the state of New Mexico.

(3) If on-site construction above the foundation is not started within 12 months of the date of approval of the final plans and specifications, the approval under these requirements shall be void and the plans and specifications must be resubmitted for reconsideration of approval.

(4) Before any construction change(s) is undertaken affecting the approved final plans, modified plans shall be submitted to the licensing authority for review and approval. The licensing authority shall notify the hospital in writing of any conflict with this subchapter found in its review of modified plans and specifications.

(5) General: Projects involving alterations of, and additions to, existing buildings shall be programmed and phased so that on-site construction will comply with all codes and minimize disruptions of existing functions. Access, exit ways, and fire protection shall be so maintained that the safety of the occupants will not be jeopardized during construction.

(6) Minimum requirements: All requirements listed in ~~Subsection G of 7.7.2.40 NMAC~~ Subsection G of 7.7.2.41 NMAC New Construction, relating to new construction projects, are applicable to renovation projects involving additions or alterations. When existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted with the approval of the licensing authority if the intent of the requirements is met and if the care and safety of patients will not be jeopardized.

(7) Nonconforming condition: When doing renovation work, if it is found to be infeasible to correct all of the nonconforming conditions in the existing facility in accordance with these standards, acceptable compliance status may be recognized by the licensing agency if the operation of the facility, necessary access by the handicapped, and safety of the patients, are not

jeopardized by the remaining non-conforming conditions.

(a) Plan approval and building permit by the construction industries division or local building department, are also required for any new construction or remodeling.

(b) Copies of the life safety codes and related codes can be obtained from the national fire protection association, 11 Tracy Drive, Avon, MA 02322.

F. Construction and Inspections. Construction shall not commence until plan-review deficiencies have been satisfactorily resolved.

(1) The completed construction shall be in compliance with the approved drawings and specifications, including all addenda or modifications approved for the project.

(2) A final inspection of the facility will be scheduled for the purpose of verifying compliance with the licensing standards, and approved plans and specifications.

(3) The facility shall not occupy any new structure or major addition or renovation space until the appropriate permission has been received from the local building and fire authorities and the licensing authority.

G. New Construction.

(1) General: Every hospital building hereafter constructed, every building hereafter converted for use as a hospital, and every addition and/or alteration hereafter made to a hospital shall comply with the requirements of these standards.

(a) Compliance with these standards does not constitute release from the requirements of other applicable state and local codes and ordinances. These standards must be followed where they exceed other codes and ordinances.

(b) No building may be converted for use as a licensed hospital, which because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patients who would be housed in such a building. Any hospital or related institution that has been vacated in excess of one year or used for occupancy other than health care will be classified as a new facility.

(c) All new construction, remodeling and additions must meet requirements set forth by these standards, the building and fire codes and by the Americans with Disabilities Act (ADA), for accessibility for persons with disabilities.

(2) Codes and standards: In addition to compliance with these standards, all other applicable building codes, ordinances, and regulations under city, county or other state agency jurisdiction shall be observed.

(a) Compliance with local codes shall be pre-requisite for licensing. In areas

not subject to local building codes, the state building codes shall be pre-requisite for licensing, as adopted.

(b) New construction for acute-care hospitals, limited services hospitals and special hospitals are governed by the current editions of the following codes and standards: uniform building code (UBC), uniform plumbing code (UPC), uniform mechanical code (UMC), national electric code (NEC), national fire protection association standards (NFPA), American national standards institute (ANSI), American society of heating, refrigerating, and air conditioning engineers (ASHREA), American institute of architects (AIA), academy of architecture for health guidelines for design and construction of hospital and health care facilities, NFPA101, and New Mexico building code (NMBC).

H. Patient Rooms-General.

(1) Bed capacity: Each hospital's bed capacity may not exceed the capacity approved by the licensing authority.

(2) Privacy: Visual privacy shall be provided for each patient in multi-bed patient rooms. In new or remodeled construction, cubicle curtains shall be provided.

(3) Toilet room:

(a) In new construction, each patient room shall have access to one toilet without entering the general corridor area. One toilet room shall serve no more than four beds and no more than two patient rooms. Where the toilet room serves more than two beds an additional hand washing shall be placed in the patient room.

(b) In new and remodeled construction, the door to the patient toilet room shall swing into the patient room, or two-way hardware shall be provided.

(c) The minimum door width to the patient toilet room shall be 36 inches (91.4 cm) for new construction. The door shall swing outward or be double acting.

(4) Minimum floor area: The minimum floor area per bed shall be 100 square feet of clear floor area in multi-bed patient rooms, and 120 square feet of clear floor area in single-bed patient rooms, exclusive of toilet rooms, closets, lockers, wardrobes, alcoves or vestibules.

(5) Minimum furnishing:

(a) A hospital-type bed with suitable mattress, pillow and the necessary coverings shall be provided for each patient.

(b) There shall be a bedside table or stand and chair for each patient.

(c) Each patient shall have within his/her room adequate storage space suitable for hanging full-length garments and for storing personal effects.

I. Isolation Room(s).

Rooms shall be provided for isolation of patients whose condition require isolation

for physical health reasons.

(1) Each isolation room shall have a separate toilet, bathtub (or shower), and a hand washing sink. These shall be arranged to permit access from the bed area without passing through the work area of the vestibule or anteroom.

(2) Each room shall have an area for hand washing, gowning, and storage of soiled materials located directly outside or immediately inside the entry door to the room.

(3) Each room shall have self-closing devices on all room exit doors. All wall, ceiling and floor penetrations in the room shall be sealed tightly.

J. Patient Care.

(1) Nursing station or administrative center: Nursing stations or administrative centers in patient care areas of the hospital may be located to serve more than one nursing unit, but at least one of these service areas shall be provided on each nursing floor or wing. The station or center shall contain:

(a) storage for records, manuals and administrative supplies;

(b) an area for charting when the charts of patients are not maintained at patient rooms;

(c) hand washing sink conveniently accessible to the nurse station;

(d) staff toilet room: in new construction, a staff toilet room and hand washing sink shall be provided on each nursing unit; and

(e) securable closet or cabinet for the personal articles of nursing personnel, located in or near the nursing station.

(2) Utility areas: A utility area room for soiled linen and other clean articles shall be readily accessible to each nursing utility area. Each room shall have:

(a) storage facilities for supplies;

(b) a hand washing sink;

(c) work counters; and

(d) a waste receptacle.

(3) Bathing Facilities: Showers and bathtubs. When individual bathing facilities are not provided in patient rooms, there shall be at least one shower and/or one bathtub for each 12 beds without such facilities. Each bathtub or shower shall be in an individual room or enclosure that provides privacy for bathing, drying, and dressing. One special bathing facility, including space for attendants, shall be provided for patients on stretchers, carts and wheelchairs for each 100 beds or fraction thereof.

(4) Equipment and supply storage: An equipment and supply storage room or alcove shall be provided for storage of equipment necessary for patient care. Its location shall not interfere with the flow of traffic.

(5) Corridors and passageways:

Corridors and passageways in patient care areas shall be free of obstacles.

(6) Housekeeping closet: A housekeeping closet shall be provided on the nursing unit or sufficient cleaning supplies and equipment shall be readily accessible to the nursing unit.

(7) Patient call system: A reliable call mechanism shall be provided in locations where patients may be left unattended, including patients' rooms, toilet and bathing areas and designed high risk treatment areas where individuals may need to summon assistance.

K. Additional Requirements for Particular Patient Care Areas.

(1) Special care units.

(a) In new construction, sufficient viewing panels shall be provided in doors and walls for observation of patients. Curtains or other means shall be provided to cover the viewing panels when privacy is desired.

(b) In new construction, a sink equipped for hand-washing and a toilet shall be provided in each private patient room. In multi-bed rooms at least one sink and one toilet for each six beds shall be provided. Individual wall-hung toilet facilities with private curtains or another means of safeguarding privacy may be substituted for a toilet room.

(c) In new construction, all beds shall be arranged to permit visual observation of the patient by the nursing staff from the nursing station. In existing facilities, if visual observation is not possible from the nursing station, sufficient staffing or television monitoring shall permit continuous visual observation of the patient.

(d) In new construction, the dimensions and clearances in special care unit patient rooms shall be as follows: single bed rooms shall have minimum dimensions of 10 feet by 12 feet, multi-bed rooms shall have minimum side clearances between beds of at least seven feet, and in all rooms the clearance at each side of each bed shall be not less than three feet six inches and the clearance at the foot of each bed shall be not less than four feet.

(2) Psychiatric units: The requirements for patient room under Paragraph (8) of Subsection B of [7-7-2.40 NMAC] 7.7.2.41 NMAC apply to patient rooms in psychiatric nursing units and psychiatric hospital except as follows:

(a) in new construction or remodeling, a staff emergency call system shall be included. When justified by psychiatric program requirements and with the approval of the licensing authority, call cords from wall-mounted stations of individual patients rooms may be removed;

(b) doors to patient rooms and

patient toilet room doors may not be lockable from the inside;

(c) patients' clothing and personal items may be stored in a separate designated area which is locked;

(d) moveable hospital beds are not required for ambulatory patients.

(3) Surgical and recovery facilities must:

(a) have at least one room equipped for surgery and used exclusively for this purpose;

(b) have a scrub room or scrub area adjacent to the surgery room used exclusively for this purpose;

(c) have a clean-up or utility room;

(d) have a storage space for sterile supplies;

(e) have means for calling for assistance in an emergency in each operating room;

(f) have housekeeping facilities adequate to maintain the operating room or rooms;

(g) have a flash sterilizer, unless sterilization facilities are accessible from the surgery area;

(h) be located and arranged to prevent unrelated traffic through the suite;

(i) ensure the room or rooms for post-anesthesia recovery of surgical patients shall at a minimum contain a medications storage area, hand-washing facilities and sufficient storage space for needed supplies and equipment; and

(j) have available oxygen and suctioning equipment in the operating suite and recovery rooms.

(4) Labor and delivery.

(a) The labor and delivery unit shall be located and arranged to prevent unrelated traffic through the unit.

(b) Facilities within the labor and delivery unit shall include: at least one room equipped as a delivery room and used exclusively for obstetrical purposes, a scrub-up room adjacent to the operative delivery unit if operative deliveries are performed, a clean-up or utility room with a flush-rim clinical sink, and a separate janitor's closet with room for housekeeping supplies for the unit.

(c) In new construction, in addition to lightning for general room illumination, adjustable examination and treatment lights shall be provided for each labor bed.

(d) The following equipment shall be available: sleeping unit for each infant, and a clock.

(e) Space for necessary housekeeping equipment in or near the nursery is required.

(f) An examination area and workspace for each nursery shall be provided.

(5) Isolation nursery.

(a) If an isolation nursery is provided in new construction: the isolation nursery shall be within the general nursery area and may not open directly to another nursery, and access to the isolation nursery shall be through an anteroom which shall have at least a sink equipped for hand-washing, gowning facilities, an enclosed storage space for clean linen and equipment and a closed hamper for disposal of refuse.

(b) A private patient room with hand-washing facilities may be used as an isolation nursery.

(6) Postpartum lounge area: The lounge and dining room when provided for maternity patients shall be separate from other areas.

L. Other Physical Environment

(1) Thresholds and expansion joint: Thresholds and expansion joint covers shall be flush with the floor surface to facilitate the use of wheelchairs and carts, and as may be required by OSHA. Expansion and seismic joints shall be constructed to restrict the passage of smoke.

(2) Emergency fuel and water: The hospital shall make provisions for obtaining emergency fuel and water supplies.

(3) Emergency lighting system: The emergency lighting system and equipment shall be tested at least monthly.

(4) Diagnostic and therapeutic facilities, supplies and equipment: Diagnostic and therapeutic facilities supplies and equipment shall be sufficient in number and in good repair to permit medical and nursing staffs to provide an acceptable level of patient care.

(5) Walls and ceilings: The walls and ceilings shall be kept in good repair. Loose, cracked or peeling wallpaper and paint of walls and ceilings shall be replaced or repaired. Washable ceilings shall be provided in surgery rooms, delivery rooms, janitor closets and utility rooms.

(6) Floors: All floor materials shall be easy to clean and have wear and moisture resistance appropriate for the location. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof and shall be kept clean and in good repair.

(7) Cords: Electrical cords shall be maintained in good repair.

(8) Carpeting:

(a) Carpeting may not be installed in rooms used primarily for food preparation and storage, dish and utensil washing, cleaning of linen and utensils, storage of janitor supplies, laundry processing, hydrotherapy, toiling and bathing, ~~resident~~ patient isolation or patient examination.

(b) Carpeting, including any underlying padding, shall have a flame spread rating permitted by the national fire

protection association's national fire codes. Certified proof by the manufacturer of this test for the specific product shall be available in the facility. Certification by the installer that the material installed is the product referred to in the test shall be obtained by the facility. Carpeting may not in any case be applied to walls except where flame spread rating can be shown to be twenty-five (25) or less.

(9) Acoustical tile: Acoustical tile shall be non-combustible and non-asbestos.

(10) Wastebaskets: Wastebaskets shall be made of non-combustible materials.

(11) Fire report: All incidents of fire in a facility shall be reported in writing to the licensing authority within 72 hours of the incident.

M. Maintenance. The hospital must maintain written evidence of routine maintenance performed for the facility, supplies and equipment to ensure an acceptable level of safety and quality.

[7.7.2.41 NMAC - Rp, 7.7.2.41 NMAC, 06-15-04; 7.7.2.41 NMAC - Rn, 7.7.2.40 NMAC, & A, 03-15-06]

~~[7.7.2.41]~~ 7.7.2.42 OTHER REQUIREMENTS:

A. Anatomical Gifts. The hospital will adopt and implement organ and tissue donation policies and procedures to assist the medical, surgical and nursing staff in identifying and evaluating potential organ or tissue donors.

(1) Organ bank: Means a facility certified by CMS for storage of human body parts.

(2) Decedent. Means a deceased individual who made a gift of all or part of his body.

(3) Donor. Means an individual who makes a gift of all or part of his body.

(4) Eye bank. Means any non-profit agency which is organized to procure eye tissue for the purpose of transplantation or research and which meets the medical standards set by the eye bank association of America.

(5) Organ procurement agency. Means any non-profit agency designated by the health care financing administration to procure and place human organs and tissues for transplantation, therapy, or research.

(6) Part. Includes organs, tissues, eyes, bones, arteries, blood, other fluids and other portions of human body.

(7) Person. Means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association or any other legal entity.

(8) State. Includes any state, district, commonwealth territory, insular possession and any other area subject to the legislative authority of the United States of America.

B. Procedures.

(1) The organ and tissue donation policy and procedure shall conform to the CMS conditions of participation for organ and tissue donations.

(2) All physician and hospital personnel shall make every reasonable effort to carry out the organ and tissue donation policy and procedure adopted by the hospital so that the wishes of a donor may be conveyed to an appropriate local organ procurement agency or eye bank and the necessary donation documents may be properly executed.

(3) Consent from next of kin. Persons authorized to donate anatomical gifts on behalf of the decedent shall conform with the Uniform Anatomical Gift Act, N.M. Laws 2000, Chapter 54, or applicable subsequent statutes.

(4) Every hospital shall develop and implement a policy and procedure for the determination of brain death pursuant to Section 12-2.4 NMSA 1978.

(5) Laws pertaining to notification of the office of the medical investigator shall be complied with in all cases of reportable deaths.

(6) The requirements of this section apply only to acute-care hospitals and limited services hospitals in New Mexico. [7.7.2.42 NMAC - Rp, 7.7.2.42 NMAC, 06-15-04; 7.7.2.42 NMAC - Rn, 7.7.2.41 NMAC, 03-15-06]

[7.7.2.42] 7.7.2.43 RELATED REGULATIONS AND CODES: Hospitals subject to these requirements are also subject to other regulations, codes and standards as the same may from time to time be amended as follows:

A. Health Facility Licensure Fees and Procedures, New Mexico department of health, 7 NMAC 1.7 (10-31-96). [7.1.7 NMAC]

B. Health Facility Sanctions and Civil Monetary Penalties, 7 NMAC 1.8 (10-31-96) [Recompiled as 7.1.8 NMAC]

C. Adjudicatory Hearings, New Mexico department of health, 7 NMAC 1.2 (2-1-96). [Recompiled as 7.1.2 NMAC]

D. Building, fire, electrical, plumbing and mechanical codes; the most current edition, adaptation by the state of New Mexico.

E. The current edition of the AIA *guidelines for construction and design of hospitals and healthcare facilities*, adopted in the state of New Mexico. [7.7.2.43 NMAC - Rn, 7.7.2.42 NMAC, 03-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.5 NMAC, Sections 7, 8 and 13, effective 03-15-06.

6.60.5.7 DEFINITIONS:

A. "NMCKA" means the New Mexico content knowledge assessments, which are the teacher-tests approved by the department, portions of which individuals must take and pass in order to receive endorsements on an initial license or as an option to add endorsements to an existing license in language arts, reading, mathematics, science, the social studies, composite of history, geography, economics, civics and government, the arts (music or visual arts), modern and classical languages, health, physical education, library/media, teaching English to speakers of other languages (TESOL), and family and consumer sciences, or to receive initial licensure in elementary education from grades K-8.

B. "NMTA" means the New Mexico teacher assessments, which are the teacher-tests approved by the department that all individuals must take and pass in order to receive initial educator licensure; the NMTA consists of the New Mexico assessment of teacher basic skills the New Mexico assessment of teacher competency (both at the elementary and secondary levels), and the New Mexico content knowledge assessments ("NMCKA"); it shall include any test materials related to a testing applicant's taking of or registration for the NMTA.

C. "Test administrator" means the business entity, namely, the national evaluation systems, inc. or NES that developed the NMTA, administers the NMTA at testing centers throughout New Mexico, scores the NMTA, and reports NMTA testing results to the department.

D. "Testing applicant" means a person who has filed an NMTA registration form with the test administrator, or has yet taken a portion of the NMTA.

E. "Testing irregularity" means any circumstance within or beyond the control of a testing applicant that, in the sole opinion of the department or NES raises doubts about the propriety of a testing applicant's NMTA registration, NMTA score, or conduct during an NMTA test.

F. "Withheld NMTA score(s)" means the suspension of use by and disclosure to a testing applicant of his NMTA score(s) for up to 120 days upon a determination made by the department professional licensure bureau director that testing irregularity is likely to have occurred.

G. "Voided NMTA score(s)" means the cancellation, invalidation and non-disclosure of a testing applicant of his NMTA score(s) after a final determination of testing irregularity by the department's professional licensure bureau director or by a hearing officer of the secretary of education.

H. "Rules of test participation" means any written rules in the applicable NMTA registration bulletin that a testing applicant has expressly agreed to comply with as a condition of registering for or taking the NMTA.

I. "Educator licensure application" means an application for any professional teaching or administrative license, excluding licensure for an athletic coach, educational assistant, substitute teacher, or instructional support providers.

J. "Core academic subjects" English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

K. "Highly qualified", under this rule, means a teacher of the core academic subjects who has no certification or licensure requirements waived on a temporary basis. [6.60.5.7 NMAC - N, 07-01-01; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05, A, 03-15-06]

6.60.5.8 REQUIREMENTS:

The NMTA consists of two generic categories of assessments. The first category is the basic knowledge, skills and competency assessments identified at Subsection A of 6.60.5.8 NMAC below. The second category is the content knowledge assessments, sometimes called content tests, identified at Subsection B of 6.60.5.8 NMAC below.

A. Beginning July 30, 1999 except for those individuals covered by Subsection C of 6.60.5.8 NMAC, below all applicants for initial licensure in addition to meeting all other licensure and background check requirements of the department, are required to take the basic knowledge, skills and competency assessments of the New Mexico teacher assessments, which consist of the following tests and obtaining the following passing scores:

- (1) assessment of teacher basic skills: passing score = 240; and
- (2) either:
 - (a) assessment of teacher competency, elementary level (for those seeking early childhood B-3 through the testing date in July, 2004, or elementary K-8 licensure including special education K-12, middle

level 5-9 and grade K-12 licensure): passing score = 240; or

(b) assessment of teacher competency, secondary level (for those seeking secondary 7-12 licensure including special education K-12, middle level 5-9 and grade K-12 licensure): passing score = 240; or

(c) assessment of teacher competency, early childhood level (for those seeking early childhood B-3 licensure beginning with the testing date in September, 2004): passing score = 240.

B. In addition to the testing requirement above, all applicants for initial teacher licensure must take and pass a test in their content area subject according to the following schedule:

(1) Beginning with the September, 2002, administration of the department's content testing, if they are seeking licensure in elementary K-8, they shall take and pass the department's content knowledge assessment in elementary education prior to issuance of that license except as provided in Paragraph (6) of Subsection B of 6.60.5.8 NMAC.

(2) Beginning with the September, 2002, administration of the department's content testing, if they are applying for licensure in early childhood birth - grade 3 or elementary K-8 and are also seeking an endorsement in reading, they shall take and pass the department's content knowledge assessment in that content area prior to issuance of that license.

(3) Beginning with the September, 2004, administration of the department's content testing, if they are applying for licensure in early childhood B-3, elementary K-8, secondary 7-12, middle level 5-9 and/or grade K-12, and are also seeking an endorsement in the arts (music or visual arts) or modern and classical languages (Spanish, French, or German) they must take and pass the department's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).

(4) Beginning with the September, 2002, administration of the department's content testing, if they are applying for licensure in secondary 7-12, middle level 5-9 and/or grade K-12 and are also seeking endorsement in language arts, reading, mathematics, science or the social studies, composite of history, geography, economics, civics and government, or any combination thereof, they shall take and pass the department's content knowledge assessment in that content area prior to issuance of that license.

(5) Beginning with the September, 2006, administration of the department's content testing if they are applying for licensure in early childhood B-3, elementary K-8, secondary 7-12, middle level 5-9 and/or grade K-12, and are also

seeking an endorsement in the health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they must take and pass the department's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).

(6) An elementary K-8 licensed teacher who is new to the profession and who teaches language arts, social studies, mathematics, or science in a middle school or junior high school must either:

(a) take and pass the department's middle level content knowledge assessment(s) in each core subject area the teacher teaches; or

(b) complete twenty-four semester hours of coursework, upper or lower division, in each core academic subject the teacher teaches and take and pass the content knowledge assessment in elementary education.

(7) If they currently hold a license and seek to add an endorsement in language arts, reading, mathematics, science, the social studies, composite of history, geography, economics, civics and government, the arts (music or visual arts), modern and classical languages (Spanish, French, or German), health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they may be issued an endorsement in the content area upon passage of the department's content knowledge assessment(s) in the respective content area except that a candidate who has passed the Prueba de Español para la Certificación Bilingüe must also complete required coursework in order to add an endorsement in modern and classical languages (Spanish).

C. Applicants for an initial Spanish/English bilingual endorsement to a teaching license must, in addition to meeting all other department requirements for the endorsement, pass Prueba de Español para la Certificación Bilingüe by obtaining a score of 2 or higher on any 12 of the 15 subsections. Applicants seeking this endorsement through licensure reciprocity should consult 6.60.4 NMAC for guidance.

~~D. A person who has failed any portion of the NMTA, excluding any New Mexico content knowledge assessment, may nevertheless qualify for issuance of a level I license provided that he or she:~~

~~(1) must at the time of issuance of such a license, have attempted but failed at least twice any portion of the NMTA, excluding any New Mexico content knowledge assessment;~~

~~(2) must at the time of issuance of such a license, have attained a score of at least 170 on each of the basic skills, general knowledge and teacher competency tests;~~

~~(3) must at the time of issuance of such a license, have been employed and observed teaching in the same school district on either a standard, temporary or combination of such licenses for at least two full school years;~~

~~(4) must at least once annually retake any failed test; and,~~

~~(5) must, pursuant to 6.60.10 NMAC ("Mentorship Programs for Beginning Teachers"), be assigned a mentor by a school district and must successfully complete at least one year of an approved mentorship program.~~

~~E. No such level I license authorized by Subsection D of 6.60.5.8 NMAC, shall be issued unless:~~

~~(1) the superintendent of the employing school district certifies in writing to the department through the professional licensure bureau of the PED, that the individual failing a portion of the NMTA as described above, should be relieved from passing one or more portions of the NMTA because he/she has successfully performed at a high degree in the same school district during at least two consecutive school years;~~

~~(2) the required high degree of performance in the case of an elementary K-8 teacher, must be documented on at least two annual evaluations and address the individual's subject knowledge and teaching skills in reading, mathematics, and other areas of the basic elementary school curriculum;~~

~~(3) the required high degree of performance in the case of a secondary 7-12 teacher, must be documented on at least two annual evaluations and address the individual's subject knowledge and teaching skills in the endorsement area in which licensure is sought.~~

~~F. Limitations on level I licenses issued pursuant to Subsections D and E of 6.60.5.8 NMAC:~~

~~(1) there shall be no exception to the requirement that a person must take and pass a state content knowledge assessment required under this rule;~~

~~(2) although a person issued such a license may receive an unrestricted level II license once he/she receives a certification of competencies at the time of licensure renewal, until this occurs he/she must, as a condition of holding this licensure, remain employed in the school district that certified that he/she should be relieved from passing one or more portions of the NMTA;~~

~~(3) during the time that a person holds such a license, if he/she was hired by a district after the first day of school of the 2002-2003 school year, he/she may not be assigned by the district to work in a targeted assistance program or school wide program that is funded by Title I of the Elementary and Secondary Education Act;~~

~~(4) under no circumstances shall any level I license be issued under these subsections after June 30, 2005;~~

~~(5) A person issued a level I license who has not passed one or more portions of the NMTA, shall not acquire a property interest in that license. Nor shall a person issued such a license acquire professional status by reason of being issued that license and holding it from year to year. Accordingly, such a license may be suspended, revoked, or its issuance denied for any reason without a hearing at any time by a vote of the department upon a written recommendation by the secretary of education ("the secretary") or his designee that states the reason for the recommendation. The individual whose license is considered for suspension, revocation, or denial of issuance, shall be given notice from the secretary of the reason for the proposed suspension, revocation or denial of issuance of his license, the date and time when the secretary will consider taking final action against his license, and an opportunity to address the secretary. Besides acts of immorality, incompetence or misconduct, such a license may be suspended, revoked or its issuance denied, for any condition not satisfied in Subsection D or E of 6.60.5.8 NMAC.]~~

[12-31-98, 07-30-99, 02-14-00; 6.60.5.8 NMAC - Rn, 6 NMAC 4.2.2.2.8 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05; A, 03-15-06]

6.60.5.13 LIMITED DISCOVERY RIGHTS: The NMTA is the primary department-approved teacher test for the state of New Mexico. It was developed by the test administrator under contract with the department to help identify candidates for educator licensure who have demonstrated the level of knowledge and skills necessary for performing the duties of a teacher in New Mexico's public schools. The department holds the exclusive copyright on the NMTA. As such, the department must safeguard not only the copyright but also the confidentiality of the NMTA. Any testing applicant who timely requests a meeting or a hearing as permitted by this regulation, shall have only limited access to the questions and answers of his NMTA and/or related materials.

A. Given the proprietary nature of the NMTA and/or related materials, under no circumstance shall a testing applicant's disputed or undisputed NMTA be released to a testing applicant, his attorney, his representative, or the general public.

B. Upon request made to the director, a testing applicant, his attorney, or representative shall be given as much access to the applicant's disputed or undis-

puted NMTA and/or related materials as is deemed reasonably necessary by the director, or hearing officer as the case may be, to prepare for his pending meeting or hearing.

C. Anyone given permission to view a testing applicant's disputed or undisputed NMTA and/or related materials, must sign a confidentiality agreement offered by the department. An NMTA and/or related materials may only be viewed during routine office hours of the department under supervision of a department employee and on the department premises. No NMTA and/or related materials may be written on, marked, electronically copied, hand-duplicated, or otherwise removed from the premises of the department. The form, subject matter, substance and wording of any NMTA test question or answer may also not be removed from the premises of the department nor may they be further disclosed in any other way. A person granted permission to review the materials covered by this section may not bring any manual or electronic copying devices to the location where the materials are offered. Such copying devices referred to in the preceding sentence shall include but not be limited to cameras, camcorders, tape recorders, writing utensils, hand-held computers, paper, briefcases, cellphones, etc. The said confidentiality agreement shall accomplish this as well as other test-security goals. Anyone who enters the department premises to review the materials covered by this section and who violates or attempts to violate any protected security measure may be, at the discretion of the department, removed from the premises and be considered to have forfeited any additional access to an applicant's disputed or undisputed NMTA and/or related materials.

D. The original or copy of any NMTA and/or related materials used as evidence at any meeting or hearing shall also be subject to confidentiality by all attendees and participants. Accordingly, all such meetings or hearings shall be closed to the public.

[6.60.5.13 NMAC - N, 07-01-01; A, 04-29-05; A, 03-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.63.8 NMAC, Sections 1, 6 through 10, and 12 and 13, effective 03-15-06

6.63.8.1 ISSUING AGENCY: ~~[State Board of Education]~~ Public Education Department

[06-15-98, 07-30-99; 6.63.8.1 NMAC - Rn, 6 NMAC 4.2.3.14.1, 03-31-01; A, 03-15-

06]

6.63.8.6 OBJECTIVE: This regulation governs the requirements for persons seeking initial and continued licensure in athletic sports including cheer, dance and drill coaching, grades 7-12.

[06-15-98; 6.63.8.6 NMAC - Rn, 6 NMAC 4.2.3.14.6 & A, 03-31-01; A, 03-15-06]

6.63.8.7 DEFINITIONS:

A. Athletic coaching means athletic services in grades 7-12 performed by a head coach or assistant coach, paid or volunteer, for any athletic sport, including cheer, dance or drill.

B. A year of athletic coaching experience means coaching for at least one complete athletic season in a year. [6.63.8.7 NMAC - N, 03-15-06]

6.63.8.8 REQUIREMENTS: All persons who perform athletic coaching, 7-12 services in public schools or in those special state-supported schools within state agencies, must hold valid, standard licensure in athletic coaching issued by the ~~[state board]~~ public education department (PED).

A. Persons seeking entry level 1 licensure in athletic coaching pursuant to the provisions of this regulation shall meet the following requirements:

(1) possess a high school diploma or equivalency with at least three (3) years athletic coaching experience at level 1; and

(2) complete the New Mexico activities association's coaches' training program to include state competencies based on the competencies of the national standards for sports coaches (NASPE).]; ~~and~~

~~(3) complete a coaches' training program approved by the New Mexico state board of education and which incorporates the state board of education's approved functional areas and related competencies in coaching; or~~

~~(4) possess a valid New Mexico teaching license with an endorsement in physical education; or~~

~~(5) complete twenty four (24) semester hours of credit in physical education from a regionally accredited college or university.]~~

B. Persons seeking level 2 licensure in athletic coaching ~~[pursuant to the provisions of this regulation]~~ shall meet the following requirements:

(1) possess a valid standard level 1 athletic coaching license; and

(2) submit verification by the superintendent of the local school district or governing authority of the private school that the coach has satisfactorily demonstrated the coaches' competencies ~~[as approved by the New Mexico state board of educa-~~

tion] of the PED.

C. Beginning July 1, 2006, persons seeking level 3 advanced licensure in athletic shall meet the following requirements:

(1) possess a valid level 2 athletic coaching license with at least three (3) years athletic coaching experience at level 2; and

(2) submit verification by the superintendent of the local school district or governing authority of the private school that the coach has satisfactorily demonstrated the coaches' competencies of the PED; and either (3), or (4), or (5) and (6) and (7);

(3) possess a New Mexico teaching license with an endorsement in physical education; or

(4) hold an undergraduate/graduate minor in coaching consisting of at least 24 semester hours of post-secondary coursework at a regionally accredited college or university; or

(5) complete an advanced coaching principles course approved by the PED; and

(6) provide verification of completion of first aid/sport first aid/athletic training; and

(7) provide verification of completion of cardio pulmonary resuscitation (CPR) training.

[06-15-98; 6.63.8.8 NMAC - Rn, 6 NMAC 4.2.3.14.8 & A, 03-31-01; A, 03-15-06]

6.63.8.9 IMPLEMENTATION:

A. Level 1 licenses shall be issued for a maximum of three (3) years and may not be continued or renewed except as provided in 6.63.8.11 NMAC. Level 2 and 3 licenses shall be issued for nine (9) years.

[B.] All persons holding a valid New Mexico license in coaching, K-12 on June 30, 1992 shall be entitled to licensure in athletic coaching, 7-12. Such licensure may be further continued pursuant to the provisions of this regulation.]

[C.]B. All athletic coaching, 7-12 licenses shall commence on July 1st of the year of issuance and expire June 30th of the year of their expiration.

C. An applicant who meets all other qualifications for a level one coaching license but has not completed the New Mexico activities association's coaches' training program may be issued a nine-year non-renewable temporary license to afford the candidate time to complete the training program. When the candidate provides evidence of completion of the training program to the PED a standard level one license will be issued with an expiration date which would have been issued originally had the candidate then been fully qualified.

[06-15-98; 6.63.8.9 NMAC - Rn, 6 NMAC

4.2.3.14.9 & A, 03-31-01; A, 03-15-06]

6.63.8.10 CONTINUING LICENSURE: Persons holding a level 2 or 3 license and seeking to continue such licensure each nine year period hereafter shall meet the following requirements: Verification by the superintendent of the local school district or governing authority of the private school that the coach has satisfactorily demonstrated the coaches' competencies as approved by the [New Mexico state board of education] PED.

[06-15-98; 6.63.8.10 NMAC - Rn, 6 NMAC 4.2.3.14.10, 03-31-01; A, 03-15-06]

6.63.8.12 EXCEPTIONS FOR PERSONS UNABLE TO DEMONSTRATE "GOOD CAUSE":

A. A person seeking continuing licensure pursuant to this regulation and who cannot show good cause for the lack of verification of the satisfactory demonstration of the competencies required by the [state board of education] PED may, upon the expiration of a period of three years from the date of expiration of the valid New Mexico license in athletic coaching, apply for a three-year level 1 license.

B. Level 1 licenses granted pursuant to this paragraph shall be subject to continuation at level 2 in the same manner as other such licenses.

[06-15-98; 6.63.8.12 NMAC - Rn, 6 NMAC 4.2.3.14.12, 03-31-01; A, 03-15-06]

6.63.8.13 SAVINGS CLAUSE:

Persons possessing level 2 athletic coaching licenses on June 30, 2006, who do not meet the requirements of Subsection B of 6.63.8.9 NMAC, but who meet all other requirements for level 3 licensure may apply to the PED for a level 3 license provided they do so by June 30, 2007.

[06-15-98; 6.63.8.13 NMAC - Rn, 6 NMAC 4.2.3.14.13, 03-31-01; 6.63.8.13 NMAC - N, 03-15-06]

[6.63.8.13] 6.63.8.14 REFERENCED MATERIAL: Competencies for Athletic Coaches, 7-12

[A.] Medical-legal aspects of coaching:

(1) condition athletes properly for each sport;

(2) utilize safe playing conditions and protective equipment;

(3) provide in-service education for student assistants;

(4) demonstrate skill in the prevention and care of injuries generally associated with athletics;

(5) identify and relate basic medical and safety information pertaining to athletic coaching;

(6) plan and coordinate procedures for emergency care;

(7) render appropriate emergency care;

(8) utilize a system of accident reporting;

(9) coordinate the roles of the coach and the trainer to the physician;

(10) provide for rehabilitation when appropriate;

(11) identify adequate athletic insurance coverage;

(12) understand the legal aspects of coaching liability; and

(13) apply research findings appropriate to the above component.

B. Human growth and developmental aspects of coaching:

(1) identify and relate to the sequential physical and motor development from adolescence through adulthood;

(2) provide experiences appropriate to the growth and development level of adolescents;

(3) analyze human performance in terms of developmental facts;

(4) identify problems of the adolescent and refer when necessary;

(5) identify and utilize methods and procedures for developing, training, and conditioning athletes;

(6) analyze the concepts of vocation and avocation in terms of the relationship of interest and ability; and

(7) apply research findings appropriate to the above component.

C. Psycho-social aspects of coaching:

(1) motivate athletes toward immediate and long-range goals;

(2) relate and interpret the program to co-workers, athletes, parents, and the general public;

(3) identify and apply ethical conduct in athletics;

(4) integrate athletics with the total educational program;

(5) identify and interpret values which are developed from participation in sports;

(6) identify desirable leadership traits and structure experiences to develop them;

(7) identify with and participate in professional and related organizations;

(8) identify and utilize basic psychological and sociological principles related to coaching;

(9) identify factors and conditions affecting motor learning, particularly of the highly skilled;

(10) apply a humanistic approach to personalize a coaching philosophy;

(11) recognize and initiate procedures to resolve behavioral and emotional problems;

(12) maintain emotional stability under stress;

(13) recognize the relationship

between personality and socialization variables; and

(14) apply research findings appropriate to the above component.

D. Bio-physical aspects of coaching:

(1) identify and utilize the mechanics of movements within body limitations;

(2) analyze performance based upon anatomical and mechanical principles;

(3) relate motor performance to individual body structure;

(4) relate human anatomy, physics, and movement to safety of the participant;

(5) relate motor performance to biomechanical analysis;

(6) identify functional systems and physiological factors for analyzing sports performance;

(7) identify the effects of environmental conditions and exercise upon the circulatory and respiratory systems;

(8) identify the effects of nutrition upon health and performance;

(9) identify the physiological response to training and conditioning;

(10) identify and interpret the use and effect of drugs upon the body; and

(11) apply research findings appropriate to the above component.

E. Theoretical and technical aspects of coaching:

(1) identify and utilize principles involved in the fundamental skills of teaching and coaching;

(2) identify and utilize the specific skills, techniques, and rules of the sport coached;

(3) identify and apply specific game tactics and strategy;

(4) organize and implement materials for scouting, practice planning, and competitive situations;

(5) identify and utilize appropriate audiovisual materials and equipment;

(6) evaluate and select personnel involved in the athletic program;

(7) demonstrate organizational and administrative efficiency in implementing sports programs;

(8) understand the role of the coach and athlete in relationship to the official;

(9) evaluate athletic performance and programs;

(10) understand and enforce the rules and regulations of appropriate governing bodies;

(11) identify and utilize essentials governing contest management; and

(12) apply research findings appropriate to the above component.

F. Practicum in athletic coaching:

(1) demonstrate knowledge of skill development through practice planning;

(2) organize, conduct, and evaluate practice sessions;

(3) assist in performance evaluation, game analysis, and event management;

(4) experience appropriate planning for the age group and skill level involved;

(5) develop aspects of one's coaching philosophy;

(6) participate in school and community public relations activities;

(7) experience office and time management;

(8) review budgeting procedures and materials;

(9) assist with equipment maintenance and distribution;

(10) assist in psychological preparation;

(11) implement self-evaluation techniques;

(12) participate in performance appraisal with cooperating coach; and

(13) apply research findings appropriate to the above component.]

A. Philosophy and ethics - coaches will:

(1) develop and implement an athlete - centered philosophy;

(2) identify, model and teach athletes positive values learned through sport participation;

(3) demonstrate ethical conduct in all facets of the sport program; and

(4) teach and reinforce responsible personal, social and ethical behavior of all people involved in the sport program.

B. Sport safety and injury prevention - coaches will:

(1) prevent injuries by ensuring that facilities are safe for sport participation;

(2) ensure that necessary protective equipment is available, properly fitted and used appropriately;

(3) monitoring environmental conditions and modify participation as needed to ensure the health and safety of participants;

(4) identify physical conditions that predispose athletes to injuries;

(5) recognize injuries and provide immediate and appropriate care;

(6) facilitate a coordinated sports health care program of prevention, care and management of injuries; and

(7) identify and address the psychological implications of injury.

C. Physical conditioning - coaches will:

(1) design programs of training, conditioning, and recovery that properly utilize exercise physiology and biomechanical principles;

(2) be an advocate for drug-free sport participation and provide accurate information about drugs and supplements; and;

(3) plan conditioning programs to help athletes return to full participation following injury.

D. Growth and development - coaches will:

(1) apply knowledge of how developmental change influences the learning and performance of sport skills; and

(2) facilitate the social and emotional growth of athletes by supporting a positive sport experience and life-long participation in physical activity.

E. Teaching and communication - coaches will:

(1) provide a learning environment that is appropriate to the characteristics of the athletes and goals of the program;

(2) develop and monitor goals for the athletes and program;

(3) organize practice based on a seasonal or annual practice plan to maintain motivation, manage fatigue and allow for peak performance at the appropriate time;

(4) plan and implement daily practice activities that maximize time on task and available resources;

(5) utilize appropriate instructional strategies to facilitate athlete development and performance;

(6) teach and incorporate mental skills to enhance performance and reduce sport anxiety;

(7) use effective communication skills to enhance individual learning, group success and enjoyment in the sport experience; and

(8) demonstrate and utilize appropriate and effective motivational techniques to enhance athlete performance and satisfaction.

F. Sport skills and tactics - coaches will:

(1) know the skills, elements of skill combinations and techniques associated with the sport being coached;

(2) identify, develop and apply specific competitive sport strategies and specific tactics appropriate for the age and skill levels of the participating athletes; and

(3) use scouting methods for planning practices, game preparation and game analysis.

G. Organization and administration - coaches will:

(1) demonstrate efficiency in contest management;

(2) be involved in public relations activities for the sport program;

(3) manage human resources for the program;

(4) manage fiscal resources for the program;

(5) facilitate planning, implementation and documentation of the emergency action plan;

(6) manage all information, documents and records for the program; and

(7) fulfill all legal responsibilities and risk management procedures associated with coaching.

H. Evaluation - coaches will:

(1) implement effective evaluation techniques for team performance in relation to established goals;

(2) use a variety of strategies to evaluate athlete motivation and individual performance as they relate to season objectives and goals;

(3) utilize an effective and objective process for evaluation of athletes in order to assign roles or positions and establish individual goals;

(4) utilize an objective and effective process for the evaluation of self and staff.

[6.63.8.14 NMAC - Rn & A, 6.63.8.13 NMAC, 03-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.69.2 NMAC, Sections 1, 3, and 6 through 8, effective 03-15-06.

6.69.2.1 ISSUING AGENCY:
~~[State Board of Education]~~ Public Education Department

[12-31-98, 07-30-99; 6.69.2.1 NMAC - Rn, 6 NMAC 4.5.1.1, 06-14-01; A, 03-15-06]

6.69.2.3 STATUTORY AUTHORITY: This regulation is adopted pursuant to Section ~~[22-10-24]~~ 22-10A-19, 22-10A-27 NMSA 1978.

[12-31-98; 6.69.2.3 NMAC - Rn, 6 NMAC 4.5.1.3, 06-14-01; A, 03-15-06]

6.69.2.6 OBJECTIVE: This regulation establishes procedures for supervising and correcting "unsatisfactory work performance" of licensed school personnel before notice of intent to discharge is served upon them or before requesting the secretary of education to suspend a level three teaching license for unsatisfactory work performance at level three licensure, and further to distinguish between the terms "unsatisfactory work performance" and "insubordination.

[12-31-98; 6.69.2.6 NMAC - Rn, 6 NMAC 4.5.1.6, 06-14-01; A, 03-15-06]

6.69.2.7 DEFINITIONS:
A. "Administrative author-

ity" means the superintendent, principal or a person acting under the authority of such superintendent or principal.

B. "Insubordination" means actual or implied willful refusal to follow written policies, regulations, rules, or procedures established by the ~~[state board of education]~~ public education department (PED), the local school board, or administrative authorities, or the lawful written or oral orders, requests or instructions of administrative authorities.

C. "Uncorrected unsatisfactory work performance" means unsatisfactory work performance which the licensed school personnel has failed to correct pursuant to the provisions in this regulation; provided, however, that if unsatisfactory work performance is uncorrectable through the evaluation and supervision process, as determined by the local school board policy, the provisions in this regulation shall not apply.

D. "Unsatisfactory work performance" means the failure by licensed school personnel to satisfactorily perform those tasks which are evaluated by the employee's supervisors, pursuant to the school district's approved plans) for evaluation and supervision of its licensed employees. Furthermore, for the purpose of this regulation unsatisfactory work performance does not include insubordination or conduct deemed to be outside the normal scope of duties of licensed school personnel.

[12-31-98; 6.69.2.7 NMAC - Rn, 6 NMAC 4.5.1.7, 06-14-01; A, 03-15-06]

6.69.2.8 UNCORRECTED UNSATISFACTORY WORK PERFORMANCE:

A. Uncorrected unsatisfactory work performance is good cause for discharging licensed school personnel[;] or for requesting the secretary of education to suspend a level three teaching license as provided in Subsection F of 6.69.4.10 NMAC so long as procedures established in Subsection B of Section 6.69.2.8 NMAC herein are followed.

B. The following procedures shall be followed by local school boards or governing authorities of state agencies in supervising and correcting unsatisfactory work performance of licensed school personnel before serving them with notice of intent to discharge pursuant to Section ~~[22-10-17]~~ 22-10A-27 NMSA 1978 or before requesting the secretary of education to suspend a level three teaching license under Subsection F of 6.69.4.10 NMAC.

(1) Two or more conferences shall have been held with licensed school personnel charged with unsatisfactory work performance by a local school board or governing authorities of state agencies before

notice of intent to discharge is served upon him or her. Such conferences shall be held with the individual's immediate supervisor and such other persons as the local board or governing authorities of state agencies may designate. For purposes of this regulation, the conference at which the supervisor first identifies unsatisfactory work performance shall be counted as one of the required conferences. Sufficient time shall have elapsed between the conferences to allow the licensed school personnel to correct the unsatisfactory work performance and to have been observed for an adequate time in the discharge of his or her duties.

(2) A written record of all conferences shall be made, specifying the areas of uncorrected unsatisfactory work performance, all action suggested by the school or agency administration which might improve such performance, and all improvements made. Each written record shall be signed by all parties to the conference. In the event of a refusal to sign, a notation shall be made of the refusal. A copy of each record shall be given to the person charged with unsatisfactory work performance. The local board or governing authority of a state agency shall retain a copy of the record to be introduced at any hearing for the person charged with unsatisfactory work performance.

(3) In addition to the requirements in Subsection B of 6.69.2.8 NMAC, before requesting the secretary of education to suspend a level three teaching license as provided in Subsection F of 6.69.4.10 NMAC a local school district or governing authorities of state agencies shall provide the teacher with professional development and peer intervention, including mentoring, for a period the school principal deems necessary.

[12-31-98; 6.69.2.8 NMAC - Rn, 6 NMAC 4.5.1.8, 06-14-01; A, 03-15-06]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

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