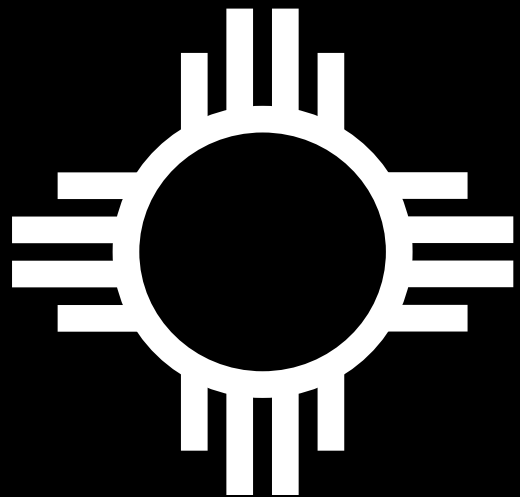


**NEW
MEXICO
REGISTER**

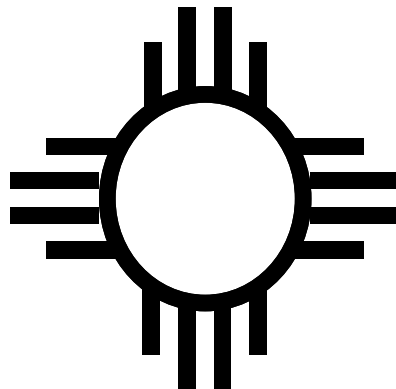


Volume XVII
Issue Number 16
August 31, 2006

New Mexico Register

Volume XVII, Issue Number 16

August 31, 2006



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2006

COPYRIGHT © 2006
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XVII, Number 16

August 31, 2006

Table of Contents

Notices of Rulemaking and Proposed Rules

Agriculture, Department of	
Notice of Hearing	789
Finance and Administration, Department of	
Local Government Division	
Notice of Hearing of Amendments to Rule 2.110.2 NMAC, Small Cities Community Development Block Grants	789
Health, Department of	
Behavioral Health Services Division	
Notice of Public Hearing	796
Hoisting Operators Licensure Examining Council	
Hoisting Operators Licensure Examining Council Special Meeting	796
Human Services Department	
Medical Assistance Division	
Notice of Public Hearing: Foster Care Medicaid	796
Notice of Public Hearing: Program of All-Inclusive Care for the Elderly (PACE)	797
Social Work Examiners, Board of	
Legal Notice: Public Rule Hearing and Regular Board Meeting	797

Adopted Rules

Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Agriculture, Department of		
21.17.47 NMAC	A	Pecos Valley Cotton Boll Weevil Control District Assessment
		799
Attorney General, Office of the		
12.2.10 NMAC	R	Extension of Credit for Small Loans
		799
Children, Youth and Families Department		
Family Services Division		
8.17.2 NMAC	R	Requirements Governing Registration of Non-Licensed Family Child Care Homes
		799
8.17.2 NMAC	N	Requirements Governing Registration of Non-Licensed Family Child Care Homes
		799
8.15.2 NMAC	A	Requirements for Child Care Assistance Programs for Clients and Child Care Providers
		803
8.16.2 NMAC	A	Child Care Centers, Out of School Time Programs, Family Child Care Homes, and Other Early Care and Education Programs
		808
Crime Victims Reparation Commission		
10.40.2 NMAC	Rn & A	Compensation
		830
Environmental Improvement Board		
20.2.3 NMAC	A	Ambient Air Quality Standards
		833
20.2.70 NMAC	A	Operating Permits
		833
20.2.72 NMAC	A	Construction Permits
		841
Game and Fish, Department of		
19.31.5 NMAC	A	Upland Game
		842
Human Services Department		
Medical Assistance Division		
8.305.3 NMAC	A	Contract Management
		842
8.305.4 NMAC	A	Managed Care Eligibility
		843
8.305.7 NMAC	A	Benefit Package
		843

8.305.11 NMAC	A	Reimbursement for Managed Care	847
8.305.12 NMAC	A	MCO Member Grievance System	849
Pharmacy, Board of			
16.19.30 NMAC	N	Compounding of Non-Sterile Pharmaceuticals	851
16.19.17 NMAC	A	Dangerous Drugs and Dangerous Drug Research	853
Public Education Department			
6.34.2 NMAC	N	Flexibility for Rural School Districts	854
6.19.6 NMAC	A	Title I Supplemental Educational Services.	855
Public Regulation Commission			
Insurance Division			
13.10.10 NMAC	A	Medical Insurance Pool Plan of Operation.	857
Workers' Compensation Administration			
11.4.7 NMAC	A	Payments for Health Care Services	858

Other Material Related to Administrative Law

Livestock Board			
		Notice of Regular Board Meeting	865
Workers' Compensation Administration			
		Director's Response to Public Comment on Changes to Part 7	865

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

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

New Mexico Department of Agriculture will hold a public hearing on the following rules:

* 21 NMAC 16.5 Bonding and Registration of Service Technicians and Service Establishments for Commercial Weighing or Measuring Devices under the Weights and Measures Law (57-17-1 through 19, NMSA, 1978 Compilation)

* 19 NMAC 15.108 Bonding and Registration of Service Technicians and Service Establishments for Commercial Weighing or Measuring Devices, under the Petroleum Products Standards Act (Chapter 57, Article 19, Sections 25 through 37, NMSA 1978)

* 21 NMAC 16.8 Weighmasters and Deputy Weighmasters License Fees under the Weighmasters Act (Chapter 57-18-1 through 26, NMSA 1978 Compilation, as amended by Chapter 80, Laws of 1979)

NMDA is proposing to repeal 21 NMAC 16.8 and amend 21 NMAC 16.5 and 19 NMAC 15.108 for the purpose of allowing the department to establish fees by external policy.

A hearing in Las Cruces will be held at the New Mexico Department of Agriculture building, 3190 South Espina (SE corner of Gregg and Espina), beginning at 1:30 p.m. on September 27, 2006.

Written statements in support or opposition, signed by the submitting person, will be accepted if received prior to 5:00 p.m., September 27, 2006. Written statements, inquiries, or requests for copies of the rule should be directed to Raymond Johnson or Joe Gomez, New Mexico Department of Agriculture, Consumer Services Bureau, PO Box 30005, MSC 3170, Las Cruces, NM 88003 or at (505) 646-1616.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

LOCAL GOVERNMENT DIVISION

Notice of Hearing of Amendments to Rule 2.110.2 NMAC Small Cities Community Development Block Grants

New Mexico Department of Finance and Administration

The Department of Finance and Administration ("DFA") hereby gives notice that DFA will conduct a public hearing in Room 317, State Capitol Building, 415 Old Santa Fe Trail, Santa Fe, New Mexico, 87503, on October 2, 2006 at 10:00 a.m. concerning amendments to 2.110.2.7 NMAC, 2.110.11 NMAC, 2.110.17 NMAC, 2.110.18 NMAC, 2.110.19 NMAC and 2.110.26 NMAC Small Cities Community Development Block Grants (hereinafter referred to as the "CDBG Rule").

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m. on September 29, 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 amendments. Copies of the text of the proposed CDBG Rule are available from Ms. Dolores Gonzales, Local Government Division, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4972 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

These are amendments to 2.110.2.7, 2.110.11, 2.110.17, 2.110.18, 2.110.19 and 2.110.26 NMAC effective XX,XX,XXXX.

2.110.2.7 DEFINITIONS:

A. "Council" means the New Mexico community development council.

B. "Department" means the department of finance and administration.

C. "Division" means the local government division.

D. "Low and moderate income person" is a member of a household whose income would qualify as "very low income" under the Section 8 housing assistance payments program. Section 8 limits are based on 50 percent of the county median income. Similarly, CDBG moderate income is based on Section 8 "lower income" limits, which are generally tied to 80 percent of the county median income.

E. "CDBG" means the small cities community development block grant program.

F. "Rural" means a county with a population of less than 25,000 and an incorporated municipality with a population of less than 3,000.

G. "Program income" means amounts earned by a unit of general

local government or its subrecipient that were generated from the use of CDBG funds.

H. "Slum area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area in which there is a predominance of buildings or other improvements which are found by the local governing body by reason of 1) dilapidation, 2) deterioration, 3) age, or 4) obsolescence, 5) inadequate provision for ventilation, light, air, sanitation or open spaces, 6) overcrowding, 7) the existence of conditions which endanger life or property, or 8) any combination of such factors, to contribute to either ill health, the transmission of disease, infant mortality, juvenile delinquency or crime, and to be detrimental to the public health, safety, morals or welfare.

I. "Blighted area" as used in the Community Development Law (3-60-1 to 3-60-37 NMSA 1978) means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty low layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present conditions and use.

J. "Units of local government": Any incorporated municipality or county.

K. "Councils of governments": A regional association of municipalities, counties and special districts formed to provide planning and other services to its member organization.

L. "Water association": Political subdivisions of the state organized under Section 3-29-1 through Section 3-29-20, NMSA 1978, the "Sanitary Projects Act" or Section 73-21-1 through Section 73-21-55, NMSA 1978, the "Water and Sanitation District Act".

M. "Land Grant/Meced (political subdivision of the state organized under section 49-1-1 through 49-1-23, NMSA 1978, Land Grants General

Provisions.)

[2.110.2.7 NMAC - Rp 2 NMAC 110.2.7, 08-30-01 xx-xx-06]

2.110.2.11 ELIGIBLE ACTIVITIES/CATEGORIES

A. Applicants may apply for funding assistance under the following categories:

- (1) community infrastructure;
- (2) housing;
- (3) public facility capital outlay;
- (4) economic development;
- (5) emergency;
- (6) colonias;
- (7) planning.

B. Eligible activities under each of the categories are listed below.

C. Community infrastructure:

Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition
- (2) construction and/or rehabilitation of the following:
 - (a) water systems;
 - (b) sewer systems;
 - (c) municipal utilities;
 - (d) roads;
 - (e) streets;
 - (f) highways;
 - (g) curbs;
 - (h) gutters;
 - (i) sidewalks;
 - (j) storm sewers;
 - (k) street lighting;
 - (l) traffic control devices;
 - (m) parking facilities;
 - (n) solid waste disposal facilities.

D. Housing:

Eligible activities may include, but are not limited to, the following:

- (1) real property acquisition;
- (2) rehabilitation;
- (3) clearance;
- (4) demolition and removal of privately-owned or acquired property for use or resale in the provision of assisted housing;
- (5) provision of public facilities to increase housing opportunities;
- (6) financing the repair, rehabilitation and in some cases reconstruction of privately-owned residential or other properties through either loan or grant programs;
- (7) certain types of housing modernization;
- (8) temporary relocation assistance;
- (9) code enforcement;
- (10) historic preservation activities;
- (11) an average of \$30,000 in CDBG funds per home can be used on home rehabilitation/repair activities.

E. Public facility capital outlay:

Eligible activities may include, but

are not limited to, such items as:

- (1) real property acquisition;
- (2) construction or improvement of community centers;
- (3) senior citizen centers;
- (4) nonresidential centers for the handicapped such as sheltered workshops;
- (5) other community facilities designed to provide health, social, recreational or similar community services for residents.

F. Economic development: The economic development category is established to assist communities in the promotion of economic development and is described in detail in Section 26.

G. Emergency: The emergency fund provides funding for emergency projects which address life threatening situations resulting from disasters or imminent threats to health and safety.

(1) Applications under this category will be accepted throughout the year.

(2) An appropriate state agency must concur and provide written verification and adequate documentation with the applicant's assessment of the life threatening situation and the need for the emergency project.

(3) An applicant for emergency funding must verify that it does not have sufficient local resources to address the life threatening condition; and that other federal or state resources have been explored and are unavailable to alleviate the emergency.

H. Planning: In addition to municipalities and counties, water associations, including water and sanitation districts, (land grants) as defined in Section 2.110.2.7, Subsection L; are eligible to apply directly for planning grants only. Grant assistance from the CDBG program must be used for a comprehensive plan, if a community or county does not have a current comprehensive plan (adopted or updated within the last five years) that includes at a minimum the following:

- (1) elements:
 - (a) land use;
 - (b) housing;
 - (c) transportation;
 - (d) infrastructure;
 - (e) economic development;
 - (f) water;
 - (g) hazards; and
 - (h) implementation, a compilation of programs and specific actions to be completed in a stated sequence;
- (2) development of additional elements of a comprehensive plan may include but are not limited to:
 - (a) drainage;
 - (b) parks, recreation and open space;
 - (c) tourism;
 - (d) growth management;
 - (e) fiscal impact analysis;

(f) intergovernmental cooperation;

(g) social services;

(h) historic preservation.

(3) if the entity has a current comprehensive plan, it may apply for funding assistance for any of the following:

(4) data gathering analysis and special studies;

(5) base mapping, aerial photography, geographic information systems, or global positioning satellite studies;

(6) improvement of infrastructure capital improvement plans and individual project plans;

(7) development of codes and ordinances, to further refine the implementation of the comprehensive plan;

(8) other functional or comprehensive planning activities;

(9) related citizen participation or strategic planning processes;

(10) applicants may apply for funding assistance throughout the year as long as funds are available;

(11) preliminary engineering reports will follow the USDA/RUS guidelines.

I. Colonias:

(1) The colonias category is established in the amount of 10% of the annual CDBG allocation for specific activities including water, sewer and housing improvements, which are the three conditions which qualify communities for designation to be carried out in areas along the U.S. - Mexican border.

(2) Eligible applicants for the colonias setaside are municipalities and counties located within 150 miles of the U.S. - Mexico border.

(3) Colonias must be designated by the municipality or county in which it is located. The designation must be on the basis of objective criteria, including:

- (a) lack of potable water supply;
- (b) lack of adequate sewage systems;
- (c) lack of decent, safe and sanitary housing;
- (d) must have been in existence as a colonia prior to November, 1990.

(4) Appropriate documentation to substantiate these conditions must be provided along with the application for funding.

[2.110.2.11 NMAC - Rp 2 NMAC 110.2.11, 08-30-01; A, 08-13-04; A, 08-15-05, , xx-xx-06]

2.110.2.17 APPLICATION REQUIREMENTS

A. Number of applications - All eligible applicants may submit one application for CDBG funding assistance in the infrastructure, housing, public facility capital outlay, or colonias categories.

(1) Planning applicants may submit an additional application for funding.

(2) Requests for assistance from eligible applicants in the economic development, emergency and planning categories can be submitted at any time, subject to funding availability.

(3) Counties may submit multiple applications for planning grants for water associations.

B. Single purpose application - An application for CDBG funding must be limited to a project specific activity or set of activities which address a particular need in a designated target area of a unit of local government. The target area may not be the entire municipality or county.

C. Joint applications - Joint applications will be allowed when two or more eligible applicants within reasonable proximity of each other wish to address a common problem.

(1) One community will be designated to serve as the lead applicant and will be subject to administrative requirements and to the application limit requirements.

(2) However, other parties to the joint application may submit another application.

(3) Joint applications must satisfy certain federal criteria and must receive division approval prior to submitting an application for funding assistance.

(4) It should be noted that satisfying the required criteria, which is available from the division upon request, may take a significant period of time.

D. Applications limit - Applications are limited to the amount of funding necessary to complete a basic, meaningful and targeted project within a 24 month period.

(1) Applications may not exceed \$500,000 and planning applications may not exceed \$50,000.

(2) If, after conducting the required public hearing, an applicant determines that the previous year's CDBG application is still a priority, the applicant ~~may ask the council to reconsider the previous year's application~~ must submit an application in its new form.

(3) The applicant need only submit a current year's resolution, updated project budget and schedule and any other information required by division staff.

E. Threshold requirements - To encourage timely completion of projects and to maximize participation the following threshold requirements shall be met prior to the application deadline.

(1) All projects for the eligible activities in the categories listed in Subsections C, D, E, and I of 2.110.2.11 NMAC must be completed at the time of application. (certificate of occupancy and/or

certification of operation must be in place).

(2) Audit and monitoring findings, especially in general program administration for CDBG projects, must be resolved.

(3) The following setaside categories are exempt from threshold requirement: planning, economic development, and emergency.

F. Matching requirements - In order to assist the council in making funding resources go further and to ensure there is a local investment in applications submitted to the council for funding consideration, the following will be required.

(1) Rural applicants must provide, at a minimum, a 5% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(2) Non-rural applicants must provide, at a minimum, a 10% cash match during the project period from local, state, federal or other resources, this cannot include local work force or local equipment.

(3) Consistent with Section 26 of these regulations, all applications in the economic development category must provide at least two private dollars for each dollar of CDBG funds requested.

(4) Local funds expended by eligible applicants for engineering, architectural design or environmental reviews prior to project approval can be applied towards the required match.

(5) Applicants may request a waiver of the matching requirement from the council if documentation can be provided which demonstrates the absence of local resources to meet the required match. Criteria used to recommend approval/disapproval will be as follows:

(a) the required match must exceed 5% of the applicant's general fund budget;

(b) the required match must equal or exceed the non-earmarked balance of funds in the applicant's budget.

G. Matching loan fund - In order to assist communities who do not have the resources to comply with the matching requirement for their project, a matching fund is available to provide money at appropriate interest rates.

(1) The council will use NMCA reversions as a funding source for the loan fund.

(2) Payment schedules will be developed by the division with appropriate payment amounts and due dates.

H. Other funding commitments - If other funding is necessary to make a proposed project feasible, funding commitments or commitments subject to CDBG approval, must be in place and letters of commitments from the funding

agency must be submitted with the application.

I. Water conservation and drought commitments - In order to make the state's water supplies go further and to ensure proper levels of preparations are taken locally for periodic droughts, the following is encouraged:

(1) Applicants develop, adopt and submit to the state engineer a comprehensive water conservation ordinance.

(2) Applicants develop, adopt and submit to the state engineer a drought management plan.

(3) The ordinance and plan shall be accompanied by a program for its implementation.

(a) in developing a water conservation ordinance pursuant to this section: applicants shall adopt ordinances and codes to encourage water conservation measures; they shall identify and implement best management practices in their operations to improve conservation of the resources; and

(b) applicants shall consider and incorporate into its plan if appropriate, at least the following:

(i) water-efficient fixtures and appliances, including toilets, urinals, showerheads and faucets;

(ii) low-water-use landscaping and efficient irrigation;

(iii) water-efficient commercial and industrial water-use processes;

(iv) water reuse systems for both potable and non-potable water;

(v) distribution system leak repair;

(vi) dissemination of information regarding water-use efficiency measures, including public education programs and demonstrations of water-saving techniques;

(vii) water rate structures designed to encourage water-use efficiency and reuse in a fiscally responsible manner; and

(viii) incentives to implement water-use efficiency techniques, including rebates to customers or others, to encourage the installation of water-use efficiency and reuse measures.

(c) the council shall encourage the applicant to submit a copy of its water conservation plan with applications for construction of any facility.

J. Asset management - In order to support the long term operation, maintenance, repair and replacement of system facilities, infrastructure, public facilities, or other eligible activities the following will be required.

(1) In order to ensure water and wastewater infrastructure is managed with-

in a strategic framework driven by program and service deliver needs, communities that implement a rate analysis based upon an asset management program will be credited in the application process for their achievement. The model for the asset management program is the EPA publication "Asset Management: A Handbook for Small Water Systems (EPA 816-R-03-0160 September 2003).

(2) For community infrastructure and public facilities, or other eligible activities an asset management plan will be required to be submitted at the time of application (EPA 816-R-03-0160 September 2003).

[2.110.2.17 NMAC - Rp 2 NMAC 110.2.17, 08-30-01; A, 08-13-04; A, 08-15-05; A, xx-xx-06]

2.110.2.18 APPLICATION PROCEDURES AND CONTENT: The application packet provided by local government division will be used for infrastructure, housing, public facility, capital outlay, colonias, emergency categories, economic development and planning.

A. An applicant must submit an original and ~~four~~ two copies of each application to the Department of Finance and Administration, Local Government Division, Bataan Memorial Building, Suite 201, Santa Fe, New Mexico 87501, and one copy to the appropriate council of governments.

B. Applications must be received at the local government division by 5 p.m. of the designated application deadline. Applications received after that time will be returned to the applicant unprocessed.

[2.110.2.18 NMAC - Rp 2 NMAC 110.2.18, 08-30-01; A, 08-13-04; A, xx-xx-06]

2.110.2.19 APPLICATION REVIEW AND EVALUATION PROCESS

A. Upon receipt of applications, division staff will review them for eligibility, completeness, feasibility, and compliance and to ensure that all other funding necessary to make the project functional is in place. Applications that are found to be incomplete, ineligible, not feasible or do not have other funding necessary to make the project functional, will be returned to the applicant and will not be considered for funding.

B. Applications will be forwarded to ~~councils of governments and~~ appropriate state agencies for technical review and comment. Review agencies include the environment department, energy, minerals and natural resources department, state highway and transportation department, department of health, state engineer's office, state agency on aging,

economic development department, department of human services, and state fire marshal.

C. Applicants will be allowed to make presentations to the council and division staff at an official council hearing. Testimony related to the application will be presented by an official or designee of the applying entity who may be assisted by technical staff.

D. Division staff will receive comments from state agencies and councils of governments regarding specific projects.

E. The council and division have developed the following rating criteria for evaluation of CDBG applications submitted for funding consideration: infrastructure, housing, public facility, capital outlay and colonias applications.

(1) Description and need — (5 points) extent to which the project is needed. The more severe the need as documented in the application, the higher the score. Colonias applicants must provide documentation to substantiate that a majority of the following conditions exist in the project area:

(a) lack of potable water;
(b) lack of an adequate sewage system;

(c) lack of safe, sanitary housing;
(d) source documentation must also be provided.

(2) Benefit to low and moderate and appropriateness - (20 points) extent to which the CDBG application:

(a) documents the number and percentage of low and moderate income beneficiaries, also include race and gender;
(b) addresses the prevention or removal of slum or blighting conditions;

(c) addresses conditions which pose a serious and immediate threat to the health and welfare of the community (for emergency applications only).

(3) Leveraging — (15 points) extent to which federal, state, and local resources, in addition to the required match, are being used by the applicant for the proposed project. The greater the leveraging, in addition to the required match, the higher the score.

(4) Citizen participation - [~~45~~ 10 points] (10 points) extent to which the applicant:

(a) has provided opportunities for public participation in the identification of community development needs;

(b) pledges opportunities for active citizen participation during the project, where applicable; and;

(c) pledges opportunities for active citizen participation in the implementation of the project, where applicable.

(5) Planning - [~~45~~ 10 points] (10 points) extent to which the applicant:

(a) (3) points: Applicant has adopted a local infrastructure capital improvement plan, which has qualified for publication in the most recent local infrastructure capital improvement plan (ICIP) published prior to the CDBG application deadline.

(b) (3) points: The proposed project has qualified for publication in the most recent ICIP prior to the CDBG application deadline and applicant has selected CDBG as one of its possible funding sources.

(c) (2) points: Degree to which applicant's proposed project shows consistency with applicant's comprehensive plan.

(d) (2) points: Adopting a drought contingency plan, setting in place various drought management stages and accompanying restrictions on water use.

(e) (3) points: Adopting a water conservation ordinance, setting in place various methods for conserving potable water.

(f) (2) points: Implementing a water conservation ordinance, accompanied by evidence of exercising at least two various methods for conserving potable water.

(6) Feasibility/readiness - (20 points) extent to which the project is technically and economically feasible and ready to be implemented. (examples of actions that can be taken prior to submission of the application to receive maximum points are:

(a) acquire necessary property;
(b) secure professional services;
(c) complete plans, specifications, or preliminary engineering report, etc.

(d) complete the environmental review process.

(7) Cost benefit - (10 points) number of direct beneficiaries of the project compared to the amount of funds requested. The higher the number of beneficiaries compared to the amount of funds requested, the higher the score.

(8) User fees and revenues - (10 points) What best demonstrates the rates or revenues that support the long term operation, maintenance, repair, and replacement of the system or facility?

(a) Rates developed by asset management as presented by the environmental finance committee (EFC). (10 points)

(b) rates developed rate analysis, excluding asset management and/or allowance for replacement of reserve funds. (5 points)

(c) rates developed by other. (1 point)

(9) Non-funded applicants - (10 points) - Applicants that were not funded in the prior year.

F. Planning criteria category

(1) Consistency (25 points): Document the degree to which the proposed planning project is consistent with the appli-

cants current version of its comprehensive plan, its infrastructure capital improvement plan, and its planning region's consolidated plan.

(2) Appropriateness (25 points):

Describe the impact the proposed project will have on at least one of the three national objectives of the CDBG program.

(3) Public involvement (25 points): Describe how the planning process will involve citizens in the preliminary identification of community needs, in the development and active participation in the planning process, and in the implementation of the plan.

(4) Implementation strategy (25 points): Describe the local commitment of resources to the planning process; commitment to adopt the plan, either by resolution, rule, policy or ordinance; and commitment to use the results of the planning process in the decision making process.

G. Economic development rating criteria is included in Section 2.110.2.26.

H. Site visits will be conducted as needed during the application review process to verify the information presented in an application.

I. Division staff will present its evaluations in high, medium and low groupings to the council at least seven days prior to the allocation meeting.

J. Because emergency, economic development, and rural planning projects are received throughout the year, formal staff rating may not be necessary if all other federal and state requirements are met and other applications are not competing for funding assistance.
[2.110.2.19 NMAC - Rp 2 NMAC 110.2.19, 08-30-01; A, 08-13-04; A, xx-xx-06]

2.110.2.26 ECONOMIC DEVELOPMENT PROGRAM GUIDELINES:

Within the context of the CDBG Program and for purposes of meeting its goals and objectives, economic development can typically be defined as improving a community's economic base by using private and public investments that provide expanded business activity, jobs, personal income and increased local revenues in a defined geographic area.

A. Goals and objectives:

The state's CDBG economic development goals and objectives include:

- (1) creating or retaining jobs for low- and moderate-income persons;
- (2) preventing or eliminating slums and blight;
- (3) meeting urgent needs;
- (4) creating or retaining businesses owned by community residents;
- (5) assisting businesses that provide goods or services needed by, and

affordable to low - and moderate-income residents;

(6) providing technical assistance to promote any of the activities under 26.1.1 through 26.1.5 above.

B. Eligible activities:

CDBG eligible activities authorized under Sections 570.200, 570.201, 570.202, 570.203, 570.204, 570.482 and 570.483 of 24 CFR Part 570 of the federal rules and regulations governing the Community Development Block Grant Program and directly affecting the creation or retention of employment opportunities, the majority of which are made available to low and moderate income persons, may include activities which are carried out by public, private nonprofit, or private for-profit entities when such activities are appropriate.

(1) To meet the needs and objectives of the community economic development plan, a project may include; acquisition of real property, construction, reconstruction rehabilitation, or installation of public facilities, site improvements, and utilities, and commercial or industrial buildings or structures and other commercial or industrial real property improvements and planning.

(2) Grantees and nonprofit subrecipients may carry out for the purpose of economic development, a wide range of activities such as those listed in Section 570.203.

(3) The for-profit businesses, however, may carry out only the activities listed in that section and rehabilitation activities listed in Section 570.202.

C. Financing policies and techniques: The New Mexico CDBG program, as a development tool, can provide flexibility and take greater risks in its lending policies and financing techniques. For example, the program may:

- (1) offer a negotiated period for repayment of principal and interest;
- (2) take greater risk than banks are traditionally prepared to take, provided substantial economic development benefits will result if the loan is granted;
- (3) leverage capital by reducing risk for commercial lenders and by taking a subordinate;
- (4) security/collateral position;
- (5) provide more favorable rates and terms than are generally available through conventional sources.

D. Project requirements:

Project requirements for eligible CDBG economic development assistance include, but are not limited to:

- (1) specific employment commitments for low and moderate income residents, generally with no more than \$15,000 in CDBG funds being used for each job created or retained;

(2) ~~[the creation of jobs within a reasonable time frame, usually not more than six months from grant approval]~~ at least 51% of the jobs created/retained must be held or made available to persons of low to moderate income persons;

(3) within six (6) months of completion of the project, the grantee is required to report to LGD, documentation to reflect the total number of jobs created;

~~(4)~~ (4) a firm commitment for private financial participation in carrying out the proposed project, contingent on award of CDBG funding only, must be included with the application;

~~(4)~~ (5) a minimum leveraging ratio of 2 new private investment dollars to 1 CDBG dollar is required, {additional leveraging will enhance a project's competitiveness};

~~(5)~~ (6) an "appropriate" determination that there is a well documented need for CDBG assistance to make the project financing feasible and that the level of assistance requested is commensurate with the public benefits expected to be derived from the economic development project;

~~(6)~~ (7) evidence of project feasibility including a business plan which contains financial statements, project pro forma (cash flow projections) and specific source and intended use of all funds or assets used in the project;

~~(7)~~ (8) generally, projects that directly assist in the relocation of a business or industry from one community to another, intrastate or interstate, will be disqualified;

~~(8)~~ (9) prior to submission of an application, applicants should thoroughly review the credit worthiness of the proposed borrower and should obtain appropriate credit reports, audited financial statements, tax returns and verify collateral.

E. Program income:

The community development council has adopted a policy of strongly encouraging and, when possible, requiring applicants in the economic development category to return program income to the state for use in fostering critical economic development opportunities that occur throughout the state. By pooling program income at the state level more of an impact can be made on the overall economic conditions of the state. The Housing and Urban Rural Recovery Act which amended the Housing and Community Development Act of 1974, provides, relative to economic development, specifically the following:

(1) states may require program income to be returned to the state but local governments must be allowed to keep program income when used for the same activity which generated the income (104(i)2);

(2) if the applicant intends to retain program income, a program income

utilization plan must be submitted with the application for approval.

F. Application cycle: Applications for economic development can be made at any time, and the division staff have thirty days to review the them.

G. Pre-application conference: It is recommended that a preapplication conference be held prior to the submission of the final application to insure that all elements are adequately addressed. The preapplication conference will also provide an opportunity to review any new federal guidelines that may be issued which relate to economic development activities. Contact the LGD, economic development representative for information. More detailed and extensive financial and project data may be required depending on the specific project. In addition, meeting the national objective to benefit low and moderate income requires documentation certifying that the majority of the jobs go to low and moderate income persons or the majority of jobs are considered available to them. Please contact the local government division for a copy of the HUD guidelines.

H. APPLICATION REQUIREMENTS: (These must be included along with the regular CDBG Application, and should be submitted in lieu of question #2 in the regular application.)

(1) Economic development plan: The applicant must submit as an attachment to the application a short (5 page maximum) description of its plan for encouraging local economic development. The plan, incorporating references to the proposed project, should include a discussion of the following elements

(a) Need - What are the community's underlying economic problems? Need might include recent major industry shutdowns or extended layoffs, substantial increases in population without a corresponding increase in job opportunities, substantial population decreases due to lack of available or appropriate job opportunities, a lack of industrial diversification, the existence of large numbers of workers in the area with obsolete skills or skills for which there is no current demand, or other problems unique to the applicant's community.

(b) Goals - What is the community attempting to accomplish through its overall economic development program (not just that activity for which CDBG funding is sought)? Goals might include trying to preserve existing businesses or industries, attempting to encourage community growth, attempting to foster industrial diversification, revitalizing the central business district, or creating complementary industries which would provide jobs in the off-season for workers now only seasonally employed.

(c) Resources - What public and

private resources, both financial and technical, does the community have available to it to help carry out its economic development program? Resources may be of a wide variety. For example, does the community have a local development corporation or similar body? Has any agency organization assigned staff member(s) to work on economic development activities for a major portion of their time? Has the financial community demonstrated its willingness to participate in development activities? Is there an adequate available labor force to meet the demands of new or expanding businesses and industries? Does the community have some unique development advantages, e.g., location, transportation facilities, industrial park or other plant sites, available raw materials, abundant power supplies, employee training capabilities, a locally-administered revolving loan fund to assist growing businesses or industries, technical assistance programs to help business persons deal with marketing, management, or financial planning problems

(d) Strategy - What strategy is the community using to pursue its economic development goals? Strategy might include a description of the specific activities that have been identified as components of the community's strategy for encouraging local economic development. For example, which has been assigned first, second, and third priority? How much will each cost? What funding sources have been identified for each? What can or will the local government do to support those activities?

(e) Results - What actions has the community already undertaken to implement its economic development plan? What sources of funding were used? What were the results? Results might include a discussion of actions the community has taken to encourage development. For example, has it offered property tax reductions to new or expanding industries? Has it formed a local development corporation or prepared industrial or tourism promotion packages? What results have been achieved? How many new jobs have been created or existing jobs retained? How many new firms have begun operations in the community? How many existing firms have undertaken expansion activities?

(2) Hiring and training plan:

(a) Applicants must establish procedures for the project to ensure preferential recruitment, hiring, and training of local workers, particularly those of low and moderate income.

(b) In the event of a grant award, the applicant's commitment to the hiring plan will be considered binding and will be incorporated by reference in the grant agreement between the local governing body and the local government division.

(3) Private sector commitments:

(a) Applicants must provide evidence of firm commitments of financial resources from the private sector.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds.

(c) Investments made or costs incurred prior to the grant application are not eligible for use as matching funds or leverage but should be referenced as related to the total project, if applicable.

(4) Public sector commitments:

(a) If public sector resources are to be involved in the proposed economic development project, applicants must demonstrate evidence of a firm commitment of public funds and/or other resources.

(b) Such commitments should be binding, contingent only upon receipt of CDBG funds to the project.

(c) Evidence may include resolutions or ordinances passed by the local governing body and other appropriate local groups.

(5) Use of CDBG funds for economic development loans (if applicable):

(a) Any project that includes a loan should provide an explanation of the proposed interest rate, terms and rationale for the proposed financing structure.

(b) Any loan made by a local governing body with CDBG funds as a part of an approved CDBG economic development project must be adequately secured.

(c) Subordinated loans may be made when justifiable and appropriate.

(d) The applicant must include a detailed description of the proposed use of program income. (principal and interest). Applicants are encouraged to designate program income to be returned to the state for future economic development setaside-eligible activities.

(6) Viability of assisted enterprises: Any for-profit entity to be assisted with CDBG funds must document that without participation of CDBG funds the proposed activity would not be feasible and that after receipt of CDBG assistance the enterprise will be viable and self-sustaining. All applicants proposing an economic development activity shall submit the following for any entity to be assisted with CDBG funds.

(a) a business plan which consists of at least a description of the history of the firm, background, and experience of the principals, organizational structure, a description of its major products or services, market area and market share, goals, and planned expansions or changes in operations; the plan should also describe the impact the CDBG project, if funded, would have on the firm's activities;

(b) a three-year to five-year oper-

ating plan forecast (profit and loss projection); applicants may use U.S. small business administration (SBA) forms or equivalent;

(c) a monthly cash flow analysis, SBA forms or equivalent.

(d) for any existing business, the two most recent year-end financial statements, including an income statement and balance sheet.

I. RATING CRITERIA:

The selection criteria in the rating and ranking system will give priority to projects which firmly demonstrate the following: need, appropriateness, impact, and benefit to low and moderate income persons. These factors are discussed below and are intended to provide additional information. Since each application will be a unique response to particular community-specific needs, there are no "right" or "wrong" activities or solutions. The ranking of "appropriateness" (and later, of "impact") will necessarily be in part subjective, with the division taking into account not only how well each applicant addresses the problems it has defined, but also how its problems and responses compare with those of other applicants. Responses may vary considerably depending upon the size and location of the community and the type of project proposed.

(1) **NEED** - (200 points) - In analyzing an applicant's need for a project, the division will use statistical information provided by the New Mexico department of labor and the U.S. bureau of the census which is uniformly available for all thirty-three (33) counties. Since similar data is not accumulated at the municipal level, cities and towns will be scored with the figures for the county in which they are located. The three factors which will be considered are: the average number of unemployed persons in the county during the last calendar year; the percent of unemployment (average) in the county during the last calendar year; long-term unemployment (measured by average unemployment rates in the county for the last five calendar years).

(a) The data will be calculated and each applicant assigned a relative score.

(b) The division will consider assigning a different score in exceptional cases, where an applicant can conclusively demonstrate that the first two factors used to measure economic need are not reflective of local economic conditions (such as major recent plant closings) and the situation is substantiated by the New Mexico department of labor. A request for consideration of local economic data must be submitted with the CDBG application. The applicant should identify sources of data and define methodologies.

(2) APPROPRIATENESS -

(200 points) - Two major factors will be weighted in this ranking category: the soundness of the applicant's economic development plan and the related project for which CDBG funding is sought; the strength of the applicant's hiring and training plan for ensuring that local residents, particularly those of low and moderate income, will be hired to fill the stated number of jobs created or retained as a result of CDBG-funded activities. These two factors will be ranked as follows:

(a) **Plan and program** - (140 points) - Some factors which might contribute to the achievement of an "outstanding" score are:

(i) that the applicant has developed a complete, well reasoned, appropriate, and achievable plan for dealing with its total economic development needs, taking into consideration all available public and private resources and local capacity;

(ii) that the local governing body has officially adopted the economic development plan as a matter of public policy;

(iii) that the proposed project for which CDBG funding is sought is an integral part of that plan; (it need not be the first priority item identified in the overall plan if other, more appropriate, resources are available and already being used to meet higher priority items);

(iv) that the applicant has made substantial local efforts to deal with its economic development problems;

(v) that the proposed CDBG project is realistic and workable, and the job savings or creation expected to result from its implementation will occur within a reasonable time following the date of grant award;

(vi) that if income is to be generated by CDBG-funded activities, and retained locally, a plan for the use of that money has been developed and submitted with the application; this plan must include mechanisms established for administration of the funds, (if a revolving loan fund is to be established with program income, procedures must be outlined covering local application processing, time frames, approval, negotiation, pricing, packaging, servicing, etc.);

(vii) that there has been active citizen participation in the development of the economic development plan and in the selection of the CDBG project.

(b) **Hiring and training plan** - (60 points) - Since a primary goal of CDBG-funded economic development grants is to increase job opportunities for local residents, particularly persons of low and moderate income, it is essential that applicants take every measure to bring about that result. Each applicant must

include in its application an employment and training plan to be used in filling jobs created or saved as a result of CDBG activities. Factors which would most likely contribute to the achievement of a high score are:

(i) that the applicant's employment and training plan provides clear, complete procedures for outreach, recruitment, screening, selection, training, and placement of workers which will ensure maximum access of local residents, particularly persons of low and moderate income, to jobs created or saved by the project;

(ii) that attention has been given to necessary supportive services for trainees needing them;

(iii) that a complete training curriculum has been developed and all training resources identified;

(iv) that responsibility has been assigned for all phases of the training program;

(v) that a written agreement to follow the plan has been obtained from each firm expected to benefit directly from the program.

(3) **IMPACT** - (200 points) - In weighing the anticipated impact of the applicant's proposed CDBG grant activities on the community's identified problems, the following four factors will be considered and evaluated:

(a) **Leverage** - (50 points) - In preparing its proposed project budget, the applicant is required to identify all sources of funds to be used and the amounts to be contributed by each. To be eligible for consideration, an applicant must provide at least two private non-CDBG dollars for each dollar of CDBG funds requested (a 2:1 ratio). The non-CDBG funds may come from a variety of private sources, such as new investment by a firm to be assisted, bank loans, or local development corporation loans and debentures. Applicants will be ranked against each other. If, for instance, community A has the highest leverage ratio (\$6 of non-CDBG funds for each \$1 of CDBG funds, a 6:1 ratio) and community B has a 2:1 leverage, community A would receive the maximum score and community B and all other applicants would be relatively scored against community.

(b) **CDBG dollars per job** - (50 points) - The applicant is required to specify the number of permanent full-time jobs to be created or retained as a result of the requested CDBG program. In determining an applicant's score in this category, the total CDBG funds to be used (exclusive of administrative funds) will be divided by the total number of full-time jobs expected to result. NOTE: In evaluating an applicant's job creation projections, the local government division will consider the historical

relationships of sales, space, and machines to jobs. It will also look at typical ratios for the industry of which the firm to be assisted is a part. Applicants should be prepared to justify job creation claims which substantially exceed industry norms or \$15,000 per job created or retained.

(c) Type of jobs - (50 points) - Although all new or retained jobs provide some measure of economic benefit to the community, full-time, skilled or semi-skilled positions are more desirable for most workers than part-time jobs or those requiring unskilled labor. One objective of CDBG economic development activities is to foster the creation and retention of permanent, full-time employment with growth potential for persons of low and moderate income, which offers those workers an opportunity for advancement in a firm or industry. Applicants are required to indicate the percentage of jobs to be created or retained which are full-time or part-time, skilled, semi skilled, or unskilled.

(d) Overall economic impact - (50 points) - The applicant must discuss both the direct and indirect effects the CDBG program is expected to have on the community's economy. Some of the factors which will be considered in evaluating impact are:

(i) the size of the additional payroll expected to be generated for the jobs created or retained by the program;

(ii) the total number of jobs to be created or retained;

(iii) whether the firm to be assisted is a primary industry (producing goods or services mainly to be sold outside the area or state, thereby importing dollars into the community and state);

(iv) whether local property tax revenues will be significantly increased as a result of the proposed business start-up, expansion, retention, etc.;

(v) the applicant demonstrating the greatest positive impact will be scored highest. All other applicants will be ranked correspondingly;

(vi) when applications have been scored in all four categories (leverage, dollars per job, types of jobs, and overall economic impact), those scores will be totaled.

(4) BENEFIT TO LOW AND MODERATE INCOME PERSONS - (200 points)

(a) This ranking criterion assesses the extent to which persons of low and moderate income will directly benefit from the expenditure of CDBG grant funds. To determine this score, the number of jobs to be created or retained and made available to low and moderate income persons will be divided by the total number of jobs to be created or retained as a result of the CDBG program.

(b) The highest score will receive up to a maximum of 200 points and all other applicants will be scored accordingly.

(c) To be eligible for consideration a project must demonstrate that it will benefit principally persons of low and moderate income.

[2.110.2.26 NMAC - Rp 2 NMAC 110.2.26, 08-30-01; A, xx-xx-06]

**NEW MEXICO
DEPARTMENT OF HEALTH
BEHAVIORAL HEALTH SERVICES
DIVISION**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.20.4 NMAC "Behavioral Health Capital Fund Program". The Hearing will be held on Monday, October 16, 2006 at 9:00 a.m. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico.

The public hearing will be conducted to establish standards and procedures for regulating programs under the Behavioral Health Capital Funding Act.

A copy of the proposed regulation can be obtained from:

Richard Tavares, Deputy Director
Behavioral Health Services Division
P.O. Box 26110
Santa Fe, NM 87502-6110
(505) 827-2662

Please submit any written comments regarding the proposed regulation to:

Richard Tavares, Deputy Director
Behavioral Health Services Division
P.O. Box 26110
Santa Fe, NM 87502-6110

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Nicholas Ossorgin by telephone at 505-827-0116. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**HOISTING OPERATORS
LICENSURE EXAMINING
COUNCIL**

HOISTING OPERATOR'S LICENSURE
EXAMINING COUNCIL

SPECIAL MEETING

Notice is hereby given that the Hoisting Operator Licensure Examining Council will hold a special meeting on Friday, August 25, 2006. The meeting will commence at 1:30 p.m. in the Construction Industries Division at 5200 Oakland Avenue NE in Albuquerque, New Mexico. Council Members will consider proposing and adopting a rule change to Subsection H of Section 16.43.2.24 NMAC: Law and Safety Examination Fee of the Hoisting Operator Safety. A copy of the Agenda will be available at the office of the Executive Director prior to said meeting.

Anyone needing special accommodations is requested to notify the Executive Director at 505-222-9809 at the above address of such needs at least 3 days prior to the meeting.

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on September 14, 2006, at the State Personnel building, large conference room (2600 Cerrillos Road), Santa Fe, New Mexico. The subject of the hearing will be Foster Care Medicaid.

The Department is proposing to raise the age limit for Foster Care Medicaid from 18 to 21 years of age.

Interested persons may submit written comments no later than 5:00 p.m., September 14, 2006, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of the Human Services Register are

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

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 11:00 a.m., on October 2, 2006, at the HSD Law Library at Pollon Plaza, 2009 S. Pacheco Street, Santa Fe, New Mexico. The subject of the hearing will be Program of All-Inclusive Care for the Elderly (PACE).

In 2004, CMS required states that had a Pre-PACE pilot program in place, to apply for authorization to become a full PACE program state. New Mexico did apply and CMS approved its Agreement Application for PACE effective July 1, 2004. New Mexico is revising its Pre-PACE rules to reflect the program's CMS approved, full provider status as PACE.

Interested persons may submit written comments no later than 5:00 p.m., October 2, 2006, to Pamela S. Hyde, J.D., Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

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

**NEW MEXICO BOARD OF
SOCIAL WORK
EXAMINERS**

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Social Work Examiners will hold a Rule Hearing on October 6, 2006. Following the Rule Hearing the New Mexico Board of Social Work Examiners will convene a regular meeting to adopt the rules and take care of regular business. The Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Nativo Lodge, 6000 Pan American Freeway NE, Albuquerque, NM 87109.

The purpose of the rule hearing is to consider adoption of proposed amendments to the following Board Rules and Regulations in 16.21 NMAC: Part 3 Application for Licensure, Part 4 Examinations, Part 6 Licensure by Credentials, Part 7 Provisional License, Part 8 Fees, Part 9 Baccalaureate Social Worker, Part 10 Master Social Worker, Part 11 Independent Social Worker, Part 12 Continuing Education, Part 15 Retirement. The Board will also consider adoption of a Part 17 Temporary licensure.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4890 after September 6, 2006. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than September 18, 2006. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

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

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

**End of Notices and
Proposed Rules Section**

This page intentionally left blank.

Adopted Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.47 NMAC, Section 8, effective 08/31/2006.

21.17.47.8 ASSESSMENT:

A. The committee assessment rate is set forth at [~~15 dollars (\$15)~~] 10 dollars (\$10) per bale of cotton for all cotton producers in the control district. The assessment will be collected at the cotton gins.

B. Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee.

C. Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8½ percent per annum on the balance unpaid after 30 days.
[21.17.47.8 NMAC - N, 06/15/2000; A, 08/31/2006]

NEW MEXICO OFFICE OF THE ATTORNEY GENERAL

OFFICE OF THE NEW MEXICO ATTORNEY GENERAL REPEAL OF RULE CONCERNING SMALL LOANS

The Attorney General is repealing the rule concerning the extension of credit for small loans in the amount of two thousand five hundred dollars (\$2,500.00) or less in its entirety. This repeal of the rule is being published by the authority vested in the Attorney General pursuant to NMSA 1978, Section 57-12-13 (1967). The rule being repealed is entitled "Extension of Credit for Small Loans" and is found at Title 12, Chapter 2, and Part 10, 12.2.10 NMAC. The repeal is effective on August 31, 2006.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes, filed February 1, 2005 is repealed and replaced by 8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes, effective August 31, 2006.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 17 NON-LICENSED CHILD CARE PART 2 REQUIREMENTS GOVERNING REGISTRATION OF NON-LICENSED FAMILY CHILD CARE HOMES

8.17.2.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.17.2.1 NMAC - Rp, 8.17.2.1 NMAC, 08/31/06]

8.17.2.2 SCOPE: All non-licensed family child care homes within the state of New Mexico who are intending to participate in the child and adult care food program or the child care assistance program.
[8.17.2.2 NMAC - Rp, 8.17.2.2 NMAC, 08/31/06]

8.17.2.3 STATUTORY AUTHORITY: The requirements (regulations) set forth herein, are established pursuant to the federal regulations at 7 CFR Part 226 CACFP, 45 CFR Part 98 CCDBG, Parts 255, 256, 257 Title 4-E, the New Mexico Public Health Act, Sections 24-1-2 and 24-1-5 NMSA 1978, and the New Mexico Children's Codes, Section 32A-15-2-3 NMSA 1978. These regulations are promulgated by authority 9-2A-7 NMSA 1978. Child care homes registered pursuant to these regulations for participation in the child and adult care food program (CACFP) and child care assistance programs (CCAP) are health facilities within the scope of Sections 24-1-2, 24-1-5 NMSA 1978, and Section 32A-15-3 NMSA 1978.
[8.17.2.3 NMAC - Rp, 8.17.2.3 NMAC, 08/31/06]

8.17.2.4 DURATION: Permanent.
[8.17.2.4 NMAC - Rp, 8.17.2.4 NMAC, 08/31/06]

8.17.2.5 EFFECTIVE DATE: August 31, 2006, unless a later date is cited at the end of a section.
[8.17.2.5 NMAC - Rp, 8.17.2.5 NMAC, 08/31/06]

8.17.2.6 OBJECTIVE: The objective of 8.17.2 NMAC is to establish standards and procedures to permit independent caregivers who are not required to be licensed as family child care homes under state regulation 8.16.2 NMAC to participate in the federal child and adult care food program (CACFP) and the state and federal child care assistance programs (CCAP) through self-certification and registration.
[8.17.2.6 NMAC - Rp, 8.17.2.6 NMAC, 08/31/06]

8.17.2.7 DEFINITIONS:
A. "Child" means any person twelve (12) years old or younger; children of migrant workers fifteen (15) years old or younger, any person with certain disabilities who is eligible under federal child and adult care food program standards; or any person eligible under state and federal child-care assistance programs standards.

B. "Child care assistance program (CCAP)" means the state of New Mexico's child care services bureau which administers the federal child care and development fund (CCDF).

C. "Child and adult care food program (CACFP)" means the state of New Mexico's family nutrition bureau which administers the federal child and adult care food program.

D. "Emergency caregiver" means someone 18 years of age or older who is authorized by the primary caregiver to provide care on an emergency basis, 48 hours or less, on behalf of the primary caregiver.

E. "Exempt provider" means a family day care home provider who is exempt from participating in the CACFP because he or she is caring only for resident children or does not provide child care during the hours when a meal (breakfast, lunch or dinner) is served.

F. "Infant" means a child from birth to one-year-old.

G. "Nonresident child" means any child who does not reside in the caregiver's home.

H. "Notifiable diseases" means confirmed or suspected

diseases/conditions as identified by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

I. "Primary caregiver" means a family day care home provider 18 years of age or older who is personally providing care to non-resident children, less than 24 hours a day, in his/her own residence and has completed a self certification registration form and paid the required fee.

J. "Registered family child care home" means the residence of an independent caregiver who registers the home under these regulations to participate in the child and adult care food program or as a vendor in the state and federal child care assistance programs.

K. "Resident child" means any child who resides in the home, such as provider's own children by birth or adoption, foster children, grandchildren, or cohabitant's children who are part of the residential unit.

L. "Second caregiver" means someone 18 years of age or older who is authorized by the primary caregiver and the day care home sponsoring organization to provide care in the absence of the primary caregiver and is required to complete all the items required of primary caregivers, including background check clearance in accordance with the most current provisions of 8.8.3 NMAC Governing Background Checks and Employment History Verification provisions, annual training hours and initial orientation and training for participation in the CACFP and/or the child care assistance program. [8.17.2.7 NMAC - Rp, 8.17.2.7 NMAC, 08/31/06]

8.17.2.8 APPLICATION: An independent caregiver who wants to participate in the federal child and adult care food program and state and federal child care assistance programs must register as a family child care home provider by submitting a completed self-certification and registration agreement and paying the processing charge. One provider per household can be registered. All registered homes receiving child care assistance subsidies must be enrolled and participate in the CACFP, unless they are exempt. [8.17.2.8 NMAC - Rp, 8.17.2.8 NMAC, 08/31/06]

8.17.2.9 CAREGIVER REQUIREMENTS:

A. All caregivers, including primary, second and emergency caregivers must be at least 18 years of age, and must be mentally, physically and emotional-

ly able to provide appropriate care for children.

B. Emergency caregivers may provide care on unforeseen, unforeseeable and rare occasions. Anyone who provides care repeatedly and/or in reasonably foreseeable circumstances is a second caregiver and must have the required background checks.

C. In the event care is provided by an emergency caregiver, all parents/guardians must be notified as promptly as possible.

D. All caregivers are responsible for immediately reporting to the appropriate authorities any symptoms of child abuse or neglect.

E. Primary and secondary caregivers are required to attend six (6) hours of training annually. Training documentation must be maintained for three (3) years and include the caregiver's name, the date of training, instructor's name and signature, topic of training and number of hours completed.

F. Primary caregivers caring for infants shall receive two hours of infant specific training within six-months of registration.

G. Primary caregivers are required to attend first aid training during their first year of registration.

H. Remaining hours of training shall be within the seven competency areas. The competency areas are: 1) child growth, development and learning; 2) health, safety, nutrition and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism. [8.17.2.9 NMAC - N, 08/31/06]

8.17.2.10 BACKGROUND CHECKS:

A. All background checks shall be conducted in accordance with the most current provisions of 8.8.3 NMAC Governing Background Checks and Employment History Verification provisions as promulgated by the children, youth and families department. All non-licensed child care providers must adhere to these provisions to maintain their registration status.

B. Child abuse and neglect screens. All adult members of the registered provider's household, the registered provider as primary caregiver, and all second caregivers, must undergo a child abuse and neglect screen. Any person who is present in the registered provider's home for significant periods while children are in care, or who commences being present in the registered provider's home for significant periods, may be required by the depart-

ment to obtain a child abuse and neglect screen.

C. Criminal records checks.

(1) If the registered provider is caring only for relative children, the registered provider as primary caregiver must undergo a state criminal records check. Second caregivers who are caring only for relative children also must undergo a state criminal records check.

(2) If the registered provider is caring for any non-relative children, the registered provider as primary caregiver must undergo federal as well as state criminal records checks. Second caregivers who are caring for non-relative children also must undergo a federal as well as a state criminal records check.

D. The registered provider must maintain documentation of all applications, correspondence and clearances relating to the background checks required in this section.

[8.17.2.10 NMAC - Rp, 8.17.2.10 NMAC, 08/31/06]

8.17.2.11 RENEWAL:

Caregivers must renew registration annually, and only after receiving an onsite inspection by the sponsoring organization, by submitting a self-certification registration agreement and paying the processing charge with cashier's check or a money order. Providers who fail to renew registration by the expiration date will not be eligible to receive program benefits from either the child and adult care food program or the child care assistance program.

[8.17.2.11 NMAC - Rp, 8.17.2.11 NMAC, 08/31/06]

8.17.2.12 ANNUAL CERTIFICATION:

Independent caregivers shall certify upon renewal that they, or any other adult living in the home, have not been convicted of a disqualifying offense during the last twelve months.

[8.17.2.12 NMAC - Rp, 8.17.2.14 NMAC, 08/31/06]

8.17.2.13 VISITS BY THE SPONSORING AGENCY AND DEPARTMENT REPRESENTATIVES:

Caregivers must consent to visits by the children, youth and families department or the child and adult care food program sponsoring agency any time nonresident children are present and/or, for relative care only providers, during the provider's stated normal hours of operation.

[8.17.2.13 NMAC - Rp, 8.17.2.12 NMAC, 08/31/06]

8.17.2.14 NON-TRANSFERABILITY OF REGISTRATION:

A. The caregiver's regis-

tration agreement is personal, and not transferable to any other person or location.

B. If the caregiver moves to a new location or has a change of name, the caregiver must register again and pay the processing charge.

[8.17.2.14 NMAC - Rp, 8.17.2.26 NMAC, 08/31/06]

8.17.2.15 I N C I D E N T

REPORTS: Registered providers shall notify CYFD immediately by phone of any incident which results in significant harm to a child or which places the child in immediate danger, such as but not limited to:

- A. a lost or missing child;
- B. the death of a child; or
- C. the abuse or neglect of a child.

[8.17.2.15 NMAC - Rp, 8.17.2.15 NMAC, 08/31/06]

8.17.2.16 C O M P L I A N C E:

By completing and submitting the self-certification registration agreement and annual renewals, the independent caregiver certifies the caregiver's home complies with these regulations. The caregiver also agrees to continue to meet these requirements, to correct deficiencies promptly and to take prompt action to resolve problems cited in complaints filed with state agencies and referred to the caregiver.

[8.17.2.16 NMAC - Rp, 8.17.2.9 NMAC, 08/31/06]

8.17.2.17 N O N - C O M P L I - A N C E:

A. Complaints received by the children, youth and families department shall be investigated promptly.

B. The children, youth and families department may deny, suspend, revoke or decline to renew registration at any time it is reasonably determined that the caregiver is not in compliance with registration standards, or is unable to maintain compliance with registration standards.

C. Grounds to suspend, revoke or decline to renew registration include:

(1) failure to comply with the group size and/or capacity requirement;

(2) health and safety violations which place the children in immediate danger, including:

(a) a dwelling infested with vermin, including rodents, with no effort to correct the problem;

(b) lack of basic sanitary facilities, such as an open cesspool or open sewer line draining onto the ground surface; and

(c) unlocked or unsecured firearms in the home;

(3) background check denial;

(4) failure to timely obtain

required background checks;

(5) substantiated fraudulent activity in the CACFP or the CCAP;

(6) failure to allow access to the registered home by authorized representatives of the department or sponsor, at any time that children are present in the registered home;

(7) substantiated non-compliance with provider requirements to care for children in the registered home as defined in the enrollment documents;

(8) substantiated abuse and/or neglect of children as determined by the protective services division of CYFD or a law enforcement agency;

(9) situations where the children in care are placed in unreasonable and/or unnecessary danger, including but not limited to: evidence of illegal drug use in the home, evidence of domestic violence in the home, a convicted sex offender maintaining residence in the home, accusations of sexual child abuse against a household member, or pending the outcome of a child protective services referral; and

(10) any serious violation or other circumstance which reasonably leads the department to determine that the caregiver cannot reliably safeguard the health and/or safety of children.

D. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of registration pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

E. The children, youth and families department notifies the registered provider in writing when registration is denied, suspended or revoked, or if renewal is declined. The notification shall include the reasons for the department's action. The registered provider may obtain an administrative appeal of the department's action.

F. The child care services bureau notifies the family nutrition bureau of any revocation or suspension of registration for a provider participating in the child care assistance programs.

G. Providers whose registration has previously been suspended or revoked may re-apply for registration. The child care services bureau may consider the reasons for the previous action, as well as changed and current circumstances, in determining whether to allow the new application. The children, youth and families department may require the registered provider to implement specific actions, or to agree to specific conditions, in order to obtain re-registration.

H. The children, youth and

families department may require the registered provider to implement specific actions, or to agree to specific conditions, in order to maintain registered status. Such specific actions or conditions may be required if the department has reasonable grounds to determine they are needed to assure the continued safe operation of the registered home. Examples:

(1) The department may require caregiver(s) to complete additional training if it appears that the caregiver has used inappropriate discipline, and revocation is not necessary under the circumstances.

(2) The department may require that certain person(s) not be permitted to enter the premises while care is being provided, if it reasonably appears that that person(s) may pose a threat to health and/or safety, or otherwise create a risk of harm to children.

I. Registered providers who are required to implement actions or to agree to conditions pursuant to subsections G or H, are notified in writing, and shall have the opportunity for administrative appeal.

[8.17.2.17 NMAC - Rp, 8.17.2.13 NMAC, 08/31/06]

8.17.2.18 A D M I N I S T R A T I V E A P P E A L R I G H T S:

A. Any registered provider who receives notice that registration is denied, revoked, suspended or that renewal is denied, has a right to an administrative appeal of the decision. Any registered provider who is required by the department to implement specific actions, or to agree to specific conditions, in order to maintain registered status, has a right to administrative appeal.

B. Administrative appeals shall be conducted by a hearing officer appointed by the department's secretary.

C. If the suspension or revocation is to take effect immediately, or if required conditions of continued operation are to take effect immediately, the department affords the registered provider the opportunity for an administrative appeal within 5 working days. If registration is suspended pending the results of an investigation, the provider may elect to postpone the hearing until the investigation has been completed.

D. If the contemplated action does not take immediate effect, and the registered home provider is given advance notice of the contemplated action, the registered provider is allowed 10 working days from date of notice to request an administrative appeal.

E. For any action taken by the department pursuant to section 8.17.2.19 of this regulation, the applicable

hearing procedure shall be that contained in section 8.17.2.19.

[8.17.2.18 NMAC - Rp, 8.17.2.27 NMAC, 08/31/06]

8.17.2.19 PROBABLE CAUSE OF IMMINENT DANGER:

A. In circumstances in which Public Health Act NMSA 1978 section 24-1-5(N) (2005) may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a provider, the provisions of section 24-1-5(N) shall apply as follows:

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

(5) No later than the conclusion of the fifteen day period, the department shall determine whether other action is warranted under this regulation.

B. Nothing in this section of the regulation shall be construed to require registration that is not otherwise required in this regulation.

[8.17.2.19 NMAC - N, 08/31/06]

8.17.2.20 GROUP COMPOSITION REQUIREMENTS:

A. A caregiver will care for no more than four (4) non-resident children at any one time.

B. A caregiver will care for no more than two (2) children under two (2) years old at any one time, including the provider's own children.

C. A caregiver will care for no more than six (6) children under six (6) years old at any one time, including the provider's own children.

D. Shifts are allowed provided there are never more than four (4) non-resident children present at any one time, including change of shifts.

E. The primary caregiver

will be physically present and actively involved in the care of nonresident children during the designated hours of child care as noted in the child enrollment forms, except for short absences when another approved caregiver is present, or emergencies. Regular outside employment is not considered a short absence.

[8.17.2.20 NMAC - Rp, 8.17.2.21 NMAC, 08/31/06]

8.17.2.21 HEALTH AND SAFETY REQUIREMENTS:

A. A caregiver will maintain the home, grounds and equipment in safe condition. The home and grounds must be clean and free of debris or other potentially dangerous hazards. All equipment must be in good repair.

B. All electrical outlets within reach of children will have safety outlets or have protective covers.

C. A caregiver will not use multiple plugs or gang plugs unless surge protection devices are used.

D. A caregiver will keep the temperature of inside areas used by children at no less than 68 degrees (fahrenheit) and no more than 82 degrees (fahrenheit). A home may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazard.

E. The home must be adequately ventilated at all times.

F. All gas-fired equipment and water heaters must have a 100% cutoff valve and be city/county inspected and approved.

G. All homes will have hot and cold running water. Water coming from a faucet will be below 110 degrees (fahrenheit) in all areas accessible to children.

H. A caregiver must provide safe playing areas inside and outside the home.

I. A caregiver will keep all poisons, toxic materials, cleaning substances, alcohol, and sharp and pointed objects in a storage area inaccessible to children.

J. The home provider must have a working telephone in the home at all times when non-resident children are present. The caregiver must have the telephone within sixty (60) days of registration. The CYFD may waive the telephone requirement if the caregiver lives in a rural area where phone service is not available or for other circumstances as approved by CYFD.

K. A caregiver will post emergency numbers for the police, fire department, ambulance, and poison control center by the telephone.

L. A caregiver will fence the outside play area when it is next to a

highway, busy street, ditch or arroyo, or other hazardous area. The fence will have one latched gate for emergency exits.

M. A caregiver will install at least one working smoke detector in an appropriate area in the home.

N. A caregiver will store all firearms, such as rifles and handguns, in a locked area inaccessible to children.

O. A caregiver will prohibit smoking and the consumption of alcoholic beverages or illegal drugs when non-resident children or, for relative care only providers, when related children are present.

P. The home will have at least one 2A-10BC fire extinguisher mounted near the exit of the kitchen. It must be visible and readily available for use and in operable condition at all times.

Q. A caregiver will store combustible and flammable materials in a safe area away from water heater rooms, furnace rooms, or laundry rooms.

R. In case of fire, the caregiver's first responsibility is to evacuate the children to safety. An up to date emergency evacuation and disaster preparedness plan must be available.

S. A home will have two (2) major exits readily accessible to children.

T. Toys and objects (including high chairs) are safe, durable, easy to clean and nontoxic.

U. Children will not use a common towel or wash cloth. All toilet rooms used by children will have toilet paper, soap and disposable towels.

V. The home will have a first aid kit stored in a convenient place inaccessible to children. The kit will contain at least band-aids, gauze pads, adhesive tape, scissors, soap, non-porous latex gloves, and a thermometer.

W. A caregiver will ensure that all pets in the home are inoculated as required by law and will keep proof of inoculations.

X. A caregiver will change wet and soiled diapers and clothing promptly. A caregiver will not change a diaper in a food preparation area. Caregivers will disinfect the diaper-changing surface and wash their hands and the child's hands after every diaper change.

Y. Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. A child shall only be transported if the child is properly secured in an age appropriate restraining device.

[8.17.2.21 NMAC - Rp, 8.17.2.22 NMAC, 08/31/06]

8.17.2.22 MEAL REQUIREMENTS:

A. Children will not use common eating or drinking utensils.

B. A caregiver will provide readily accessible drinking water in sanitary cups or glasses.

C. Meals must meet age-appropriate USDA requirements, including the following meal components: one (1) serving of meat or alternate; two (2) servings of fruits or vegetables; one (1) serving of bread or alternate and one (1) serving of fluid milk. A caregiver must serve whole milk to children one to two years old.

D. A caregiver must keep a daily menu.

E. Caregivers will serve meals family style and allow children to assist in the preparation and serving of food and snacks.

F. Caregivers will feed children a meal or snack every three (3) hours.

G. Caregivers and children will wash their hands regularly and before each meal time.

H. Caregivers will keep food requiring refrigeration, including formula, at 41 degrees fahrenheit or below.

I. Refrigerators shall have working thermometers.

[8.17.2.22 NMAC - Rp, 8.17.2.23 NMAC, 08/31/06]

8.17.2.23 RECORD KEEPING REQUIREMENTS: Caregivers must keep an information card for each child with:

A. the child's full name;

B. the child's birth date;

C. any known food or drug allergies or unusual physical condition;

D. the name, telephone number, and location of a parent or other responsible adult to be contacted in any emergency;

E. the name and telephone number of the child's physician;

F. authorization from a parent or guardian for the caregiver to seek professional medical care in an emergency;

G. written permission from a parent or guardian for the caregiver to administer medication prescribed by a physician or requested by the parent; and,

H. an immunization record showing current, age-appropriate immunizations for each child or a written waiver for immunizations granted by the department of health.

[8.17.2.23 NMAC - Rp, 8.17.2.24 NMAC, 08/31/06]

8.17.2.24 CAREGIVING RESPONSIBILITIES:

A. A caregiver will use

discipline that is positive, consistent and age-appropriate. The caregiver will not use:

(1) physical punishment of any type;

(2) withdrawal of food;

(3) restriction of rest or bathroom opportunities;

(4) any form of public or private humiliation, including yelling or threats of physical punishment;

(5) isolation or unsupervised separation; or

(6) any other type of punishment that is hazardous to the physical, emotional or mental state of the child.

B. Each home must offer children activities and experiences that are developmentally appropriate, allow children choices, and promote positive social, emotional, physical and intellectual growth and well being. Caregivers will schedule activities in these areas. A caregiver will schedule routine activities such as meals, snacks, rest periods, and outdoor play to provide structure to the children's daily routine. Other activities should be flexible based on changes in the children's interests. A caregiver will also provide a variety of indoor and outdoor equipment to meet the children's developmental interests and needs. Equipment will encourage large and fine muscle activity, solitary and group play and active and quiet play. Television, videotapes and video games should be limited to two hours a day and should be age-appropriate.

C. Caregivers of infants will allow them to creep, crawl or toddle and will hold them for bottle-feeding and at other times. Caregivers will allow infants to eat and sleep on their own schedules.

[8.17.2.24 NMAC - Rp, 8.17.2.25 NMAC, 08/31/06]

HISTORY OF 8.17.2 NMAC:

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

ISD CCAP 400, Provider Registration, 11/4/91

ISD CCAP 500, Provider Selection and Payment, 11/4/91

History of Repealed Material:

8 NMAC 17.2, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8/1/00.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/30/01.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 11/1/02.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child

Care Homes - repealed 02/14/05.

8.17.2 NMAC, Requirements Governing Registration of Non-Licensed Family Child Care Homes - repealed 8/31/06.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

FAMILY SERVICES DIVISION

This is an amendment to sections 8.15.2.7, 8.15.2.8, 8.15.2.10, 8.15.2.16, 8.15.2.17, and 8.15.2.21 of 8.15.2 NMAC, effective 8/31/06. Section 8.15.2.15 is under consideration and will be amended at a later date.

8.15.2.7 DEFINITIONS:

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

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

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

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

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

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

G. "Star level" means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality. The AIM HIGH essential elements, as approved by the child development board, are the criteria that will be used for determining the number of stars.

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

I. "Infant, toddler, pre-

school, school age” means the age categories used for assigning child care provider reimbursement rates, defined as follows:

- (1) infant: 0-23 months;
 - (2) toddler: 24 -35 months;
 - (3) preschool: 3 to 5 year olds;
- and
- (4) school age: 6 year olds and older.

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

K. “National accreditation status” means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds the standards of one of the following national accrediting bodies: the national association for the education of young children (NAEYC); the national early childhood program accreditation (NECPA); the American Montessori society (AMS); the Montessori school accreditation commission (MSAC); the national association of family child care (NAFCC); the council of accreditation (COA); the national after school association (NAA); or the association of Christian schools international (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

L. “Non-traditional hours of care” means care provided between the after hours of 7 p.m. and 7 a.m. Monday through Friday and/or care provided during weekend hours between 12:00 a.m. Saturday morning and 12:00 a.m. Monday morning.

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

N. “Overpayment” means a payment of child care assistance benefits

received by a client or provider for which they are ineligible based on incomplete or inaccurate information provided by either the client or the provider, or agency error.

O. “Protective services child care” means child care services for children placed in the custody of the protective services of the department.

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

(1) “In-home” care means care provided in the child’s own home.

(2) “Registered home” means child care provided in the home of a provider who is registered with the department’s child and adult care food program to care for up to four (4) children. All registered homes receiving child care assistance subsidies must be enrolled and participate in the child and adult care food program (CACFP), unless they are ineligible.

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

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

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

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

~~[(7) “Provisional provider” means a child care provider selected by the parent who is not already registered or licensed. The provider is allowed a 45 calendar day grace period in which to become registered or licensed.]~~

Q. “Recertification” means the process by which a client’s eligibility to continue to receive child care assistance benefits are determined.

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

S. “Residing with” means living in a household which provides shelter and care to a child during the non-working hours of the child’s parent or guardian.

T. “Suspension” means that the child care case is kept open, but benefits are not paid.

U. “TANF” means the temporary assistance to needy families program administered by the U.S. department

of health and human services. TANF is the successor to the aid to families with dependent children (AFDC) program and provides cash assistance to qualified low-income families with dependent children.

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

W. “Termination” means the child care case is terminated due to cause.

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

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

Z. “Waiting list” means a list of families who have applied for child care services during a period of lack of funding.

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

BB. “CACFP” means the child and adult care food program, administered by the children, youth and families department.

[8.15.2.7 NMAC - Rp, 8.15.2.7 NMAC, 02/14/05; A, 09/15/05; A, 08/31/06]

8.15.2.8 TYPES OF CHILD CARE:

These policies apply to child care assistance benefits provided to eligible children for the following types of child care to ensure that parents have a variety of child care services from which to choose:

A. child care programs administered by public schools and post-secondary institutions that provide on-site care for the children of students;

B. child care programs administered by tribal entities;

C. child care programs administered by church or religious organizations;

D. in-home care;

E. child care in licensed centers;

F. child care in registered family childcare homes;

G. child care in licensed family and group childcare homes;

H. out of school time programs; and

I. programs operated by employers for their employees; and

J. ~~provisional providers.~~

[8.15.2.8 NMAC - Rp, 8.15.2.8 NMAC, 02/14/05; A, 08/31/06]

8.15.2.10 APPLICATION

PROCESS: Clients apply for child care assistance benefits by presenting the following documents to establish eligibility in person, or by mail, at the local child care office:

A. a completed signed application form;

B. proof of earned income or participation in the temporary assistance to needy families (TANF) program or the food stamp employment and/or training (E&T) program; social security numbers may be used to establish TANF participation or receipt of child care support;

C. school schedule, if applicable;

~~D. social security numbers for all members of the household;~~

~~E.] D.~~ birth certificates for all applicant children;

~~F.] E.~~ proof of unearned income;

~~G.] E.~~ proof of residency; and

~~H.] G.~~ the name, address, phone number, and social security number of the provider selected to care for the children;

~~H.] H.~~ assistance is provided effective the first day of the month of application if all of the following apply:

(1) the client is utilizing child care services;

(2) the client is employed, attending school or a training program; and

(3) the provider to be paid was providing care from the first day of the month forward.

[8.15.2.10 NMAC - Rp, 8.15.2.10 NMAC, 02/14/05; A, 08/31/06]

8.15.2.16 DEPARTMENT RESPONSIBILITIES:

A. The department pays child care providers who provide child care services to department clients in a timely manner.

B. Child care assistance workers perform all casework functions in a timely manner, including the processing of payments and notifications of case actions.

C. Child care assistance workers notify clients and providers in writing of all actions, which affect services, benefits, or provider payments or status, citing the applicable policy.

D. Child care assistance workers determine eligibility for all child care assistance programs except for TANF and E&T. Eligibility for TANF and food stamp E&T program is determined by the New Mexico human services department.

E. Child care assistance

workers must inform parents of their right to choose their child care providers and provide information on how to look for quality child care in a provider.

F. The department and other organizations approved by the department provide information and orientation programs regarding child care assistance benefits, quality child care issues, and the impact of child care on the child's physical, mental, social and emotional development to parents and providers.

G. The department and other organizations approved by the department offers provider education programs consisting of training on program participation requirements, parent and provider responsibilities, licensing and registration requirements, payment issuance and ~~criminal records~~ background check processing, the competency areas for child care providers as outlined by the office of child development, or the department, the importance of providing quality child care, and other topics of interest to parents and providers. These education programs count toward the continuing education hours required of providers by registration and licensing regulations.

[8.15.2.16 NMAC - Rp, 8.15.2.16 NMAC, 02/14/05; A, 08/31/06]

8.15.2.17 PAYMENT FOR

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

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

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

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of

care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

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

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

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

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

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

H. Monthly reimbursement rates

Licensed child care centers								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$467.84	\$410.22	\$350.88	\$307.67	\$233.92	\$205.11	\$116.96	\$102.56
Toddler	\$417.19	\$381.10	\$312.89	\$285.82	\$208.60	\$190.55	\$104.30	\$95.27
Pre-school	\$386.48	\$354.49	\$289.86	\$265.87	\$193.24	\$177.25	\$96.62	\$88.62
School age	\$337.11	\$324.43	\$252.83	\$243.32	\$168.56	\$162.22	\$84.28	\$81.11
Licensed group homes (capacity: 7 -12)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$370.48	\$347.43	\$277.86	\$260.57	\$185.24	\$173.72	\$92.62	\$86.86
Toddler	\$335.40	\$327.70	\$251.55	\$245.78	\$167.70	\$163.85	\$83.85	\$81.93
Pre-school	\$329.55	\$322.28	\$247.16	\$241.71	\$164.78	\$161.14	\$82.39	\$80.57
School age	\$325.00	\$315.00	\$243.75	\$236.25	\$162.50	\$157.50	\$81.25	\$78.75
Licensed family homes (capacity: 6 or less)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$365.20	\$342.60	\$273.90	\$256.95	\$182.60	\$171.30	\$91.30	\$85.65
Toddler	\$325.08	\$320.04	\$243.81	\$240.03	\$162.54	\$160.02	\$81.27	\$80.01
Pre-school	\$324.17	\$317.09	\$243.13	\$237.81	\$162.09	\$158.54	\$81.04	\$79.27
School age	\$319.28	\$309.64	\$239.46	\$232.23	\$159.64	\$154.82	\$79.82	\$77.41

	Registered homes and in -home child care							
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-school	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

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

J. ~~[The department pays a differential rate to former gold and silver licensed providers and providers holding national accreditation status. Former gold and silver licensed providers receive an additional \$100.00 per month and \$33.00 per month, respectively, for full time care above the base reimbursement standard. In order to continue at these reimbursement rates a provider must meet and maintain former gold and silver licensing requirements. If a former gold or silver licensed provider fails to meet the former gold and silver licensing requirements this could result in the provider reimbursement reverting to a lower level of reimbursement.]~~ Providers holding national accreditation status receive an additional ~~[\$100.00]~~ \$120.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher Star levels as follows: 2-Star at ~~[\$25.00]~~ \$45.00 per month per child for full time care above the base reimbursement rate; 3-Star at ~~[\$50.00]~~ \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at ~~[\$75.00]~~ \$95.00 per month per child for full time care above the base reimbursement rate, and 5-Star at ~~[\$100.00]~~ \$120.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

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

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

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

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

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

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06]

8.15.2.21 SANCTIONS: Sanctions may be imposed on clients/providers for failing to meet programmatic requirements which

affect benefits and result in an overpayment. Sanctions are imposed according to the severity of the infraction as determined by the department and as detailed below.

A. Providers or clients who fail to make timely payments in the case of recoupment of overpayments are disqualified from the program until payment is brought current.

B. Providers or clients who fail to report in a timely manner that a child is not in attendance for ten consecutive, scheduled days will have the payment recoupment process initiated.

C. Providers who allow their registration or license to lapse without renewal will not be paid during the periods for which the license or registration is not current. Providers who lose national accreditation status or lose eligibility for payment at any level of reimbursement for failure to maintain the standards required to be paid at that level of reimbursement, will not be paid at that level of reimbursement beginning with the first day of the month during which the loss of accreditation or eligibility occurred. Payment recoupment will be sought for any period for which excessive benefits have been paid.

D. Clients who fail to pay co-payments may be disqualified until the co-payment is paid and/or until an agreement is made between the client and the provider to bring the co-payment current. The department assists the provider in collecting the co-pay only if the co-pay has been in arrears 30 calendar days or less.

E. Clients who fail to timely report changes that affect their eligibility resulting in an overpayment will be sanctioned and payment recoupment will be sought for the entire amount accruing from the end of the 14 calendar days allowed for notification through the date the client provides notice of the change to the department. A first offense results in a written warning and recoupment; a second offense results in a 3-month suspension and recoupment; and a subsequent offense results in permanent disqualification.

[8.15.2.21 NMAC - Rp, 8.15.2.21 NMAC, 02/14/05; A, 08/31/06]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

This is an amendment to sections 8.16.2.7, 8.16.2.8, 8.16.2.11, 8.16.2.12, 8.16.2.18, 8.16.2.20, 8.16.2.21, 8.16.2.22, 8.16.2.23, 8.16.2.25, 8.16.2.27, 8.16.2.30, 8.16.2.31, 8.16.2.32, 8.16.2.33, 8.16.2.34, 8.16.2.35, 8.16.2.36, 8.16.2.40, 8.16.2.41, 8.16.2.42, 8.16.2.43, 8.16.2.45, and 8.16.2.46 of 8.16.2 NMAC, effective 8/31/06.

8.16.2.7 DEFINITIONS:

A. "Abuse" means any act or failure to act, performed intentionally, knowingly or recklessly, which causes or is likely to cause harm to a child, including:

(1) physical contact that harms or is likely to harm a child;

(2) inappropriate use of a physical restraint, isolation, medication or other means that harms or is likely to harm a child; and

(3) an unlawful act, a threat or menacing conduct directed toward a child that results and/or might be expected to result in fear or emotional or mental distress to a child.

B. "Activity area" means space for children's activities where related equipment and materials are accessible to the children.

C. "Adult" means a person who has a chronological age of 18 years or older.

D. "AIM HIGH" is a voluntary quality child care improvement program that is open to all registered and licensed child care providers.

E. "Assessment of children's progress" means children's progress is assessed informally on a continuous basis using a series of brief anecdotal records (descriptions of the child's behavior or skills in given situations). Children's progress also can be assessed formally at least twice a year using a developmental checklist (checklist of behaviors that indicate physical, motor, language, cognitive, social and emotional development/progress).

F. "Attended" means the physical presence of a caregiver supervising children under care. Merely being within eyesight or hearing of the children does not meet the intent of this definition (See Supervision, [Section ~~PP~~] Subsection FFE, 8.16.2.7 NMAC).

G. "Capacity" means the maximum number of children a licensed child care facility can care for at any one time.

H. "Caregiver" means an adult who directly cares for, serves, and supervises children in a licensed child care facility.

I. "Child" means a person who is under the chronological age of eighteen (18) years.

J. "Child care center" means a facility required to be licensed under these regulations that provides care, services, and supervision for less than 24-hours a day to children. A child care center is in a non-residential setting and meets the applicable state and local building and safety codes.

K. "Class A deficiency" means any violation or a group of viola-

tions, which have potential to cause injury or harm if not corrected.

L. "Class B deficiency" means any substantiated abuse or neglect of a child or staff or exploitation which results in injury or harm; or a violation or group of violations which presents direct substantial risk of harm.

M. "Class C deficiency" means any substantiated abuse or neglect of a child or staff or violation which results in death, great physical or psychological harm.

N. "Core hours" means the daily hours of operation of the center.

O. "Curriculum" is what happens every day in the classroom and on the playground. It includes every aspect of the daily program. Curriculum derives from the program's mission statement, philosophy (which, in turn, is based on assumptions about young children's development and learning), and program goals and objectives. It includes how materials and equipment are used, activities that children and adults participate in, and interactions among children and between children and adults.

P. "Deficiency" means a violation of these regulations.

Q. "Director" means the person in charge of the day-to-day operation and program of a child care center.

R. "Discipline" means guidance, which fosters the child's ability to become self-disciplined. Disciplinary measures will be consistent and developmentally appropriate (See Punishment).

S. "Environment" means that the environment meets all required local, state, and federal regulations. It includes space (both indoors and outdoors) with appropriate equipment and materials that encourage children to engage in hands-on learning.

T. "Drop-in" means a child who attends a child care facility on an occasional or unscheduled basis.

U. "Facility" means any premises licensed under these regulations where children receive care, services, and supervision (can be a center, home, program, or other site where children receive childcare).

V. "Family child care home" means a private dwelling required to be licensed under these regulations that provides care, services and supervision for a period of less than twenty-four (24) hours of any day for at least five (5) but no more than six (6) children. The licensee will reside in the home and be the primary care giver.

W. "Star level" means a license indicating the level of quality of an early childhood program. A greater number of stars indicates a higher level of quality.

X. "Group child care home" means a home required to be licensed pursuant to these regulations,

which provides care, services, and supervision for at least seven (7) but not more than twelve (12) children. The licensee will reside in the home and be the primary care giver.

Y. "Home" means a private residence and its premises licensed under these regulations where children receive care, services, and supervision. The licensee will reside in the home and be the primary care giver.

Z. "Infant" means a child age six (6) weeks to twelve (12) months.

AA. "License" means a document issued by CYFD to a child care facility licensed and governed by these regulations and granting the legal right to operate for a specified period of time, not to exceed one year.

BB. "Licensee" means the person(s) who, or organization which, has ownership, leasehold, or similar interest in the child care facility and in whose name the license for the child care facility has been issued and who is legally responsible for compliance with these regulations.

CC. "Licensing authority" means the child care services bureau - licensing section of the family services division of the New Mexico children, youth and families department which has been granted the responsibility for the administration and enforcement of these regulations by authority of Children, Youth and Families Department Act, Section 9-2A-1 to 9-2A-16 NMSA 1978, as amended.

DD. "Mission statement," describes what the program aspires to do and whom the program aspires to serve.

EE. "Moral turpitude" means conduct defined as such in the most current version of the ~~[Criminal Records]~~ Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC.

FF. "National accreditation status" means the achievement and maintenance of accreditation status by an accrediting body that has been approved by CYFD. Approval of an applicant accrediting body by CYFD is pursuant to procedures established by CYFD and requires, at a minimum, that the applicant accrediting body meets the following criteria: 1) is national in scope and practice; 2) has a process to ensure that interim quality is maintained by the accredited entity; 3) meets or exceeds the standards of one of the following national accrediting bodies: the national association for the education of young children (NAEYC); the national early childhood program accreditation (NECPA); the American Montessori society (AMS); the Montessori school accreditation commission (MSAC); the national association of family child care (NAFCC), the national

child care association (NCCA); the council of accreditation (COA); the national after-school association (NAA); or the association of Christian schools international (ACSI); and 4) promotes indicators of quality which address, at a minimum, the following: staff training, director and staff qualifications, curriculum and environment, program administration, and staff/child ratios.

GG. "Night care" means the care, services and supervision provided by a licensed child care facility to children between the hours of 10:00 p.m. to 6:00 a.m.

HH. "Neglect" means the failure to provide the common necessities including but not limited to: food, shelter, a safe environment, education, emotional well-being and healthcare that may result in harm to the child.

II. "Notifiable diseases" means confirmed or suspected diseases/conditions as itemized by the New Mexico department of health which require immediate reporting to the office of epidemiology which include but are not limited to: measles, pertussis, food borne illness, hepatitis and acquired immune deficiency syndrome.

JJ. "Orientation" means a process by which the employer informs each new employee, volunteer and substitute, in advance of assuming their duties, of the mission, philosophy, policies, and procedures of the program, including clear direction about performance expectations.

KK. "Parent handbook" is a written communication tool that provides valuable information to families of the children the program serves. It includes all matters of relevance to family members regarding the program and is updated annually, or as needed.

LL. "Pest" means any living organism declared a pest pursuant to the Pesticide Control Act.

MM. "Pesticide" means any chemical substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest.

NN. "Philosophy statement" describes how the program's mission will be carried out. It reflects the values, beliefs, and convictions of the program about how young children learn and describes the components of the program that contribute to that learning. It provides the program's perspective on early care and education and the nature of how children learn. The program's philosophy is implemented through the curriculum.

OO. "Plan of correction" means the plan submitted by the licensee addressing how and when identified deficiencies will be corrected.

PP. "Policy" is a written directive that guides decision-making. Policies form the basis for authoritative action.

QQ. "Premises" means all parts of the buildings, grounds, and equipment of a child care facility licensed pursuant to these regulations.

RR. "Procedure" is a series of steps to be followed, usually in a specific order, to implement policies.

SS. "Professional development" is an on-going plan for continued professional development for each staff member, including the director.

TT. "Program administrator" means the person responsible for planning or implementing the care of children in the program. This includes but is not limited to making contact with parents, keeping appropriate records, observing and evaluating the child's development, supervising staff members and volunteers, and working cooperatively with the site director and other staff members toward achieving program goals and objectives. (This definition applies only to the out of school time programs child care regulations.)

UU. "Punishment" means the touching of a child's body with the intent of inducing pain. This includes but is not limited to pinching, shaking, spanking, hair or ear pulling. It also includes any action which is intended to induce fear, shame or other emotional discomfort.

VV. "Requirements" means the criteria and regulations developed by children, youth and families department in 8.16.2 NMAC; to set minimum standards of care, education and safety for the protection and enhancement of the well-being of children receiving care, services or supervision.

WW. "Restriction" means to control enrollment, service type, capacity, activities, or hours of operation.

XX. "Revocation" means the act of making a license null and void through its cancellation.

YY. "Sanction" means a measure imposed by the licensing authority for a violation(s) of these standards.

ZZ. "Staff evaluation" means that each staff member is evaluated by the director, using criteria from the individual's job description. The individual being evaluated knows ahead of time the criteria and procedures (which may include self-evaluation) for which they are being evaluated. The director discusses evaluation results with each staff member, and results are considered when determining salary increments and are incorporated into the individual's professional development plan.

AAA. "Substitute" means an adult who directly cares for, serves, and supervises children in a licensed child care

facility, who works in place of the regular caregiver, and who works less than an average of forty (40) hours per month in a six (6) month period.

~~[AAA.]~~ BBB. "Suspension" means a temporary cancellation of a license pending an appeal hearing and/or correction of deficiencies.

~~[BBB.]~~ CCC. "Out of school time program" means a school age program at a specific site, usually a school or community center, offering on a consistent basis a variety of developmentally appropriate activities that are both educational and recreational.

~~[CCC.]~~ DDD. "Site director" means the person at the site having responsibility for program administration and supervision of an out of school time program. This applies to out of school time programs only.

~~[DDD.]~~ EEE. "Substantiated complaint" means a complaint determined to be factual, based on an investigation of events.

~~[EEE.]~~ FFF. "Supervision" means the direct observation and guidance of children at all times and requires being physically present with them. The only exception is school-age children who will have privacy in the use of bathrooms.

~~[FFF.]~~ GGG. "Survey" means a representative of the licensing authority enters a child care facility, observes activity, examines the records and premises, interviews parents and staff members and records deficiencies.

~~[GGG.]~~ HHH. "Toddler" means a child age twelve (12) months to twenty-four (24) months.

~~[HHH.]~~ III. "U/L" means the underwriters laboratory, which is a standards organization which tests electrical and gas appliances for safety.

~~[HH.]~~ JJJ. "Unattended" means a caregiver is not physically present with a child or children under care.

~~[JJJ.]~~ KKK. "Unsubstantiated complaint" means a complaint not determined to be factual based on an investigation of events.

~~[KKK.]~~ LLL. "Variance" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for the period of licensure. The granting of variances is at the sole discretion of the licensing authority.

~~[LLL.]~~ MMM. "Waiver" means an allowance granted by the licensing authority to permit non-compliance with a specified regulation for a specified, limited period of time. The granting of waivers is at the sole discretion of the licensing authority.

[8.16.2.7 NMAC - Rp, 8.16.2.7 NMAC, 02/14/05; A, 08/31/06]

8.16.2.8 RELATED REGULATIONS AND CODES: Facilities subject to these regulations are also subject to the current versions of the following regulations and codes:

A. New Mexico health ~~[and environment]~~ department regulations, Control of Disease and Conditions of Public Health Significance, 7.4.3 NMAC.

B. New Mexico health ~~[and environment]~~ department regulations, Control of Communicable Disease in Health Facility Personnel, 7.4.4 NMAC.

C. New Mexico health ~~[and environment]~~ department regulations, Governing Public Access to Information in the Department Records, 7.1.3 NMAC.

D. New Mexico ~~[children, youth and families department]~~ department of health regulations, Health Facility Licensure Fees and Procedures, 7.1.7 NMAC.

E. New Mexico children, youth and families department regulations, ~~[Adjudicatory Hearings, 7.1.2 NMAC]~~ Administrative Appeals, 8.8.4 NMAC.

F. New Mexico ~~[children, youth and families department]~~ department of health regulations, Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

G. New Mexico children, youth and families department regulations, Governing ~~[Criminal Records]~~ Background Check and Employment History of Licensees and Staff of Child Care Facilities, [7.1.10 NMAC] 8.8.3 NMAC.

H. New Mexico health ~~[and environment]~~ department, Food Service and Food Processing, 7.6.2 NMAC.

I. Latest edition adopted by the New Mexico state fire board of the National Fire Protection Association Life Safety Code Handbook 101.

J. Latest edition of the Uniform Fire Code.

K. Latest edition adopted by the New Mexico construction industries division of the Uniform Building Code enacted by the international conference of building officials.

L. Latest edition of the New Mexico Building, Plumbing/Mechanical and Electrical codes adopted by the New Mexico construction industries division.

M. New Mexico department of health Regulations Governing Immunizations Required for School Attendance Immunization Requirement, 7.5.2 NMAC.

~~[N. New Mexico health and environment department, Regulations Governing CCFP Family Day Care Home Registration, effective October 8, 1986, 8.17.2 NMAC.]~~

~~[O.]~~ N. Federal Americans with

Disabilities Act (ADA).

~~[P.]~~ O. New Mexico department of agriculture Regulations Pesticide Control Act, Chapter 76, Article 4, Sections 1 through 39, NMSA 1978 and 21.17.50 NMAC.

P. Latest edition of Critical Heights of Playground Equipment for Various Types and Depths of Resilient Surfaces Based on Information from the U.S. CONSUMER PRODUCT SAFETY COMMISSION (CPSC Publication No.325), Handbook for Public Playground Safety.

[8.16.2.8 NMAC - Rp, 8.16.2.8 NMAC, 02/14/05; A, 08/31/06]

8.16.2.11 LICENSING:

A. TYPES OF LICENSES:

(1) Annual license: An annual license is issued for a one-year period to a child care facility that has met all requirements of these regulations.

(a) 1-star level requires meeting minimum licensing requirements.

(b) 2-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH level 2 criteria at all times.

(c) 3-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH levels 2 and 3 criteria at all times.

(d) 4-star level is voluntary and requires meeting and maintaining minimum licensing requirements and AIM HIGH levels 2, 3, and 4 criteria at all times.

(e) 5-star level is voluntary and requires meeting and maintaining minimum licensing requirements and maintaining approved national accreditation status.

(2) TEMPORARY LICENSE: The licensing authority will, at its discretion, issue a temporary license when it finds the child care facility in partial compliance with these regulations.

(a) A temporary license can, at the discretion of the licensing authority, be issued for up to one-hundred-twenty (120) days, during which time the child care facility will correct all specified deficiencies.

(b) The licensing authority will not issue more than two (2) consecutive temporary licenses.

(c) After a second temporary license has been issued, a new application and the required application fee must be submitted in order to renew the license.

(3) AMENDED LICENSE: A child care facility will submit a new application to the licensing authority before modifying information required to be stated on the license; such as dates, capacity, director, ~~[address,]~~ number of stars, etc.

(a) A child care facility will apply to the licensing authority for an amended

license in order to change the director. The child care facility must notify the licensing authority within 24 hours after the child care facility becomes aware of the need to name a new director, submit an application (Fee \$20.00) and, if necessary, appoint a temporary acting director with the minimum requirements of a high school diploma or GED and 3 yrs of experience. The temporary acting director's appointment is valid for 30 days.

(b) A notarized application must be submitted for a change of capacity. (Fee \$20.00) Application for an increase or decrease of capacity will not be approved nor an amended license issued until an on-site visit has been made by the licensing authority to determine that the child care facility meets all applicable codes and regulations. A child care facility must not accept additional children or change the layout of the child care facility until the licensing authority has approved and issued the amended license.

(c) A child care facility will apply to the licensing authority for an amended license in order to change the number of stars. An application for a different star level will not be approved nor an amended license issued until on-site visits have been made and it has been determined that the child care facility meets all applicable criteria.

(4) RENEWAL OF LICENSE:

(a) A licensee will submit a notarized renewal application, indicating the number of stars requested, on forms provided by the licensing authority, along with the required fee, at least thirty (30) days before expiration of the current license. ~~[Gold and]~~ CYFD-approved nationally accredited centers, homes and out of school time programs will submit copies of their current accreditation certificates along with their renewal application. Applications postmarked less than thirty (30) days prior to the expiration date will be considered late and a twenty five dollar (\$25.00) late fee must be submitted with the renewal fee.

(b) The licensing authority will conduct an annual children's protective services division screening for all center owners and directors, and all licensed homes caregivers and any other adults over the age of 18 living in the licensed homes. Centers must maintain an original criminal record check (CRC) clearance letter for all current employees and applicable volunteers, including a signed statement annually by each staff person certifying that they would not be disqualified as a direct provider of care under the most current version of the ~~[Criminal Records]~~ Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC. This will include all adults and teenage children living in a family child care or group child care home operated in a private residence.

(c) Upon receipt of a notarized renewal application, the required fee and the completion of an on-site survey, the licensing authority will issue a new license effective the day following the date of expiration of the current license, if the child care facility is in compliance with these regulations.

(d) If a licensee fails to submit a notarized renewal application with the required fee before the current license expires, the licensing authority may require the agency to cease operations until all licensing requirements are completed.

~~[B. GRANDFATHERED SILVER AND GOLD LICENSES: Effective July 1, 2006, the department will not recognize grandfathered gold and silver licenses. Those currently holding grandfathered silver licenses have the option to become accredited through a nationally recognized body on their own and receive the accredited rate by July 2006, join AIM HIGH as a priority participant and strive for whichever level desired to be reimbursed at the level they are performing on July 1, 2006; or revert to the base rate as of July 1, 2006. Grandfathered gold licenses will be designated as AIM HIGH level five as long as accreditation is maintained. Accredited centers must meet and maintain all licensing standards and their CYFD approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the center's accrediting body of the center's failure to meet and maintain licensing standards. Up until June 30, 2006 a silver level licensee must meet and maintain the following indicators of quality in addition to the minimum licensing requirements:~~

~~(1) The director, site director (if applicable), and all care givers working with children in a class will verify successful completion of the forty five (45) hour entry level course or a higher level of training, e.g. child development associate (CDA), certified child care professional credential (CCP), a Montessori teacher certification, a national administrator credential (NAC) or an associates of arts, bachelors or higher degree.~~

~~(2) A child care center must be in self study for CYFD approved national accreditation or have a well developed and written program curriculum document reflecting developmentally appropriate practices. There must be daily written curriculum plans that reflect the implementation of the curriculum.~~

~~(3) Program and operational goals will be developed, published and posted at least annually.~~

~~(4) Staff/child ratios where children are grouped by age:~~

Age in Group	Staffing
Six (6) weeks through twenty-four (24) months	One (1) adult for every five (5) children or fraction of group thereof.
Two (2) years	One (1) adult for every eight (8) children or fraction of group thereof.
Three (3) years	One (1) adult for every ten (10) children or fraction of group thereof.
Four (4) years	One (1) adult for every ten (10) children or fraction of group thereof.
Five (5) years	One adult for every twelve (12) children or fraction of group thereof.
Six (6) years	One (1) adult for every twelve (12) children or fraction of group thereof.

~~(5) Staff/child ratios where age groups are combined:~~

AGE IN GROUP	STAFFING
Six (6) weeks through twenty-four (24) months	One (1) adult to every five (5) children or fraction thereof.
Two (2) Three (3) and Four (4) years	One (1) adult to every ten (10) children or fraction thereof.
Three (3) Four (4) and Five (5) years	One (1) adult to every twelve (12) children or fraction thereof.
Six (6) years	One (1) adult to every twelve (12) children or fraction thereof.

(6) Group size is the number of children in an area supervised by a care giver(s). The definition of area as it pertains to group size is a space delineated by a structure consisting of, but not limited to, a wall, folding door, shelving or other barriers. Barriers do not need to limit an adult's view of a larger area, but should provide children with a sense of separation from other groups, including sound attenuation, visual barriers, and physical barriers which would limit free movement of children to other group areas.

(7) Maximum group:

(a) 6 weeks to 24 months old 10

(b) 2 year olds 16

(c) 3, 4 & 5 year olds 24

(d) 6 years + 24

(8) Children must be in the same group on a consistent basis. They will not be moved from group to group during the day except during the early morning and late afternoon, a maximum of two (2) hours in the morning and two (2) hours in the afternoon. Staff/child ratios must be met for each group.

(9) A grandfathered gold level licensee must provide a copy of current accreditation awarded by NAEYC, NECPA, affiliation with a nationally recognized Montessori association, NCCA, NAFCC, the council of accreditation, NAA, ACSI or a comparable body which has been approved by the children, youth and families department.

(10) A grandfathered gold licensee must meet the staff/child and group size ratios specified above for silver licensees.]

[C.] B. POSTING OF LICENSE: A child care facility will post the license on the licensed premises in an area readily visible to parents, staff members, and visitors.

[D.] C. NON-TRANSFERABLE RESTRICTIONS OF LICENSE: A licensee will not transfer a license by assignment or otherwise to any other person or location. The license will be void and the licensee will return it to the licensing authority when:

(1) the owner of the child care facility changes;

(2) the child care facility moves;

(3) the licensee of the child care facility changes; or

(4) the child care facility closes.

[E.] D. AUTOMATIC EXPIRATION OF LICENSE: A license will expire automatically at midnight on the expiration date noted on the license unless earlier suspended or revoked, or:

(1) on the day a child care facility closes;

(2) on the day a child care facility is sold, leased, or otherwise changes ownership or licensee;

(3) on the day a child care facility moves.

[F.] REVOCATION OR SUSPENSION OF LICENSE WITHOUT PRIOR HEARING: In accordance with Section 24-1-5 NMSA 1978, the licensing authority will suspend or revoke a license immediately if action is required to protect human health and safety. Under emergency circumstances, when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, the licensing authority may immediately revoke or suspend a license. The licensing authority will hold a hearing within three (3) working days of the emergency suspension unless a hearing is waived by the licensee. Otherwise, the licensing authority may revoke a license pursuant to the procedure set forth in 7.1.2. NMAC. Upon a determination that a child care facility is not in compliance with any licensing requirement of the department, the department may impose sanctions or civil monetary penalties as established and in accordance with 24-1-5.2 NMSA 1978 Amended. Intermediate sanctions; civil penalty may consist of:

(1) Emergency suspension or revocation of license or emergency intermediate sanction(s) for a class C deficiency.

(2) Sanction with the issuance of a temporary license for a class B deficiency.

(3) Temporary license with a directed plan of correction for a class A deficiency.

G. GROUNDS FOR ACTIONS AGAINST LICENSEE OR APPLICANT: The licensing authority may revoke, suspend or restrict a license or deny an initial or renewal application, or impose monetary or other sanctions, or reduce to a base level of child care assistance reimbursement those providers who are in receipt of a higher than base level of child care assistance reimbursement, pursuant to procedures after notifying the licensee and providing them with the opportunity for a hearing, for any of the following reasons:

(1) violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk;

(2) failure to allow access to the licensed premises by authorized representatives of the licensing authority;

(3) misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;

(4) allowing any person to be active in the child care facility who would be disqualified as a direct provider of care under the most current version of the criminal records checks and employment history verification provisions pursuant to 8.8.3 NMAC. This will include all adults and teenaged children living in a family child care or group child care home operated in a private residence;

(5) hiring or continuing to employ any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(6) allowing the number of children in the child care facility to exceed its licensed capacity;

~~(7) failure to comply with provisions of the other related regulations listed in these regulations;~~

~~(8) discovery of repeat violations of the regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous licensure periods;~~

~~(9) discovery of prior revocations or suspensions that may be considered when reviewing a facility's application for licensure or license renewal;~~

~~(10) loss of accreditation as defined in Subsection Z of 8.16.2.7 NMAC, regardless of reason, will result in a lower level of reimbursement; or~~

~~(11) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be possessed and/or sold on the premises at any time, regardless of whether children are present.] [8.16.2.11 NMAC - Rp, 8.16.2.11 NMAC, 02/14/05; A, 09/15/05; A, 08/31/06]~~

8.16.2.12 [HEARING PROCEDURES]

~~A. Unless otherwise specified in these regulations, hearing procedures for adverse action taken by the licensing authority against a child care facility license are held in accordance with children, youth and families department regulations Adjudicatory Hearings, 7.1.2 NMAC.~~

~~B. The licensing authority will provide the child care facility with a copy of the relevant regulations when an adverse action is taken against its license or a child care facility may request a copy at any time from the licensing authority.]~~

LICENSING ACTIONS AND ADMINISTRATIVE APPEALS:

A. The licensing authority may revoke, suspend, or restrict a license or deny an initial or renewal license application, or impose monetary sanctions pursuant to 7.1.8 NMAC, or impose other sanctions or requirements against a licensee, or reduce to a base level of child care assistance reimbursement a licensee who is in receipt of a higher than base level of child care assistance reimbursement, for any of the following reasons:

(1) violation of any provision of these regulations, especially when the licensing authority has reason to believe that the health, safety or welfare of a child is at risk, or has reason to believe that the licensee cannot reasonably safeguard the health and/or safety of children;

(2) failure to allow access to the licensed premises by authorized representatives of the licensing authority;

(3) misrepresentation or falsification of any information on an application form or any other form or record required by the licensing authority;

(4) allowing any person to be active in the child care facility who is or would be disqualified as a direct provider of care under the most current version of the Background Checks and Employment History Verification provisions pursuant to 8.8.3 NMAC; this will include all adults and teenaged children living in a family child care or group child care home operated in a private residence;

(5) failure to timely obtain required background checks;

(6) hiring or continuing to employ any person whose health or conduct impairs the person's ability to properly protect the health, safety, and welfare of the children;

(7) allowing the number of children in the child care facility to exceed its licensed capacity;

(8) failure to comply with provisions of the other related regulations listed in these regulations;

(9) discovery of repeat violations of the regulations or failure to correct deficiencies of survey findings in current or past contiguous or noncontiguous licensure periods;

(10) discovery of prior revocations or suspensions that may be considered when reviewing a facility's application for licensure or license renewal;

(11) loss of accreditation, regardless of reason, will result in a lower level of reimbursement; or

(12) possessing or knowingly permitting non-prescription controlled substances or illegal drugs to be present and/or sold on the premises at any time, regardless of whether children are present.

B. Commencement of a children, youth and families department or law enforcement investigation may be grounds for immediate suspension of licensure pending the outcome of the investigation. Upon receipt of the final results of the investigation, the department may take such further action as is supported by the investigation results.

C. The children, youth and families department notifies the licensee in writing of any action taken or contemplated against the license/licensee. The notification shall include the reasons for the department's action.

D. The licensee may obtain administrative review of any action taken or contemplated against the license/licensee.

E. The administrative review shall be conducted by a hearing officer appointed by the department's secretary.

F. If the action is to take effect immediately, the department affords the licensee the opportunity for an administrative appeal within 5 working days. If the license is suspended pending the results of

an investigation, the licensee may elect to postpone the hearing until the investigation has been completed.

G. If the contemplated action does not take immediate effect, and the licensee is given advance notice of the contemplated action, the licensee is allowed 10 working days from date of notice to request an administrative appeal.

H. In circumstances in which Public Health Act NMSA 1978 Subsection N of Section 24-1-5 (2005) may apply, and in which other provisions of this regulation are not adequate to protect children from imminent danger of abuse or neglect while in the care of a provider, the provisions of Subsection N of Section 24-1-5 shall apply as follows:

(1) The department shall consult with the owner or operator of the child care facility.

(2) Upon a finding of probable cause, the department shall give the owner or operator notice of its intent to suspend operation of the child care facility and provide an opportunity for a hearing to be held within three working days, unless waived by the owner or operator.

(3) Within seven working days from the day of notice, the secretary shall make a decision, and, if it is determined that any child is in imminent danger of abuse or neglect in the child care facility, the secretary may suspend operation of the child care facility for a period not in excess of fifteen days.

(4) Prior to the date of the hearing, the department shall make a reasonable effort to notify the parents of children in the child care facility of the notice and opportunity for hearing given to the owner or operator.

(5) No later than the conclusion of the fifteen day period, the department shall determine whether other action is warranted under this regulation.

(6) Nothing in Subsection H of 8.16.2.12 NMAC shall be construed to require licensure that is not otherwise required in this regulation.

[8.16.2.12 NMAC - Rp, 8.16.2.12 NMAC, 02/14/05; A, 08/31/06]

8.16.2.18 [CRIMINAL RECORDS] BACKGROUND CHECKS:

[Criminal background] Background checks will be conducted in accordance with the most current regulations related to [Criminal Records] Background Checks and Employment History Verification provisions as promulgated by the children, youth and families department pursuant to 8.8.3 NMAC. All licensed child care facilities must adhere to these provisions to maintain their licensing status.

[8.16.2.18 NMAC - Rp 8.16.2.18 NMAC,

02/14/05; A, 08/31/06]

8.16.2.20 LICENSURE:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee.

(2) ~~[CRIMINAL RECORDS]~~ BACKGROUND CHECK: The licensing authority will provide a copy of the most current version of the department's ~~[Criminal Records]~~ Background Check and Employment History Verification provisions, fingerprint cards and instructions for completing them, and forms for recording an employment history. The licensee will be responsible for obtaining ~~[criminal records]~~ background checks on all staff, volunteers, and prospective staff as per the requirements outlined in the department's most current version of the ~~[Criminal Records]~~ Background Check and Employment History Verification provisions. All requirements of the current ~~[Criminal Records]~~ Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(3) ZONING, BUILDING AND OTHER APPROVALS: An applicant will have: current written zoning approval from the appropriate city, county or state authority; current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority; current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; current written approval from the New Mexico environment department or other environmental health authority for:

- (a) a kitchen, if meals are prepared on site and served in the center;
- (b) private water supply, if applicable;
- (c) private waste or sewage disposal, if applicable; and
- (d) a swimming pool, if applicable.

(4) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW CENTERS:

(a) Accessibility to individuals with disabilities is provided in all new centers and will include the following:

- (i) main entry into the center is level or has a ramp to allow for wheelchair access;
- (ii) building layout allows for access to the main activity area;
- (iii) access to at least one bathroom is required to have a door clearance of 32 inches; the toilet unit also provides a 60-inch diameter turning radius;

(iv) if ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise; and

(v) ramps exceeding a six-inch rise are provided with handrails.

(b) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the center.

(5) SCHEDULE: All applications for a new license will include a description of the center's proposed activities and schedule.

(6) INITIAL SURVEY: The licensing authority will schedule a survey for a center when it receives a complete application with all supporting documents.

B. CAPACITY OF CENTERS:

(1) The number of children in a center, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed facility, including school-age children and the children of staff members and volunteers, in the capacity of the facility, even if the children are on a field trip or other outing outside the licensed premises. The licensed capacity must not be exceeded by the presence of school-age children.

(3) A center must meet the following space requirements:

(a) Thirty-five (35) square feet of indoor activity space measured wall to wall on the inside for each child in a center, excluding single-use areas, such as restrooms, kitchens, halls and storage areas, and excluding offsets and built-in fixtures.

(b) Seventy-five (75) square feet of outdoor activity space for each child using the area at one time. The center will post the maximum capacity of the playground on the premises.

C. INCIDENT REPORTING REQUIREMENTS: A center will report immediately by phone to the licensing authority and follow-up in writing any incident that has threatened or could threaten the health and safety of children and staff members, such as, but not limited to:

- (1) a lost or missing child;
- (2) the death of a child;
- (3) the abuse or neglect of a child;
- (4) accidents, illness, or injuries that require medical care beyond on-site first aid;
- (5) fire, flood, or other natural disaster that creates structural damages to a center or poses a health hazard;
- (6) any of the illnesses on the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health;
- (7) any legal action against a cen-

ter or staff members related to the care and custody of children; and

(8) any declaration of intention or determination to inflict punishment, loss, injury or pain on child or staff member by the commission of an unlawful act, such as, but not limited to, a bomb threat.

D. A center will notify parents or guardians in writing of any incident including, notifiable illnesses, that have threatened or could threaten the health or safety of children in the center. Incidents include, but are not limited to those listed in Subsection C of 8.16.2.20 NMAC.

E. Incident reports involving suspected child abuse and neglect must be reported immediately by the licensing authority to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.16.2.20 NMAC - Rp, 8.16.2.20 NMAC, 02/14/05; A, 08/31/06]

8.16.2.21 ADMINISTRATIVE REQUIREMENTS:

A. ADMINISTRATION RECORDS: A licensee will display in a prominent place:

- (1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the center;
- (2) the current child care regulations;
- (3) dated weekly menus for meals and snacks;
- (4) the ~~[discipline]~~ guidance policy; and,
- (5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

- ~~[(1) mission statement; that describes:~~
- ~~(a) services the program aspires to provide; and~~
- ~~(b) whom the program aspires to serve.~~
- ~~(2) philosophy statement; that includes:~~
- ~~(a) beliefs about children's growth, development and behavior;~~
- ~~(b) what and how children learn;~~
- ~~(c) adults roles in children's learning, specifically how adults guide or control the teaching and learning process; and~~
- ~~(d) a description of the environment and how it contributes to learning.~~
- ~~(3) curriculum statement; which~~

includes:

- ~~(a) play as the primary mode of learning;~~
- ~~(b) active engagement of children;~~
- ~~(c) opportunities to make choices;~~
- ~~(d) opportunities to experiment and explore; and~~
- ~~(e) promotion of children's social emotional development.]~~

- (1) mission statement;
- (2) philosophy statement; and
- (3) curriculum statement.

C. POLICY AND PROCEDURES: All facilities using these regulations must have written policies and procedures covering the following areas:

- (1) actions to be taken in case of accidents or emergencies involving a child, parents or staff members;
- (2) policies and procedures for admission and discharge of children;
- (3) policies and procedures for the handling of medications;
- (4) policies and procedures for the handling of complaints received from parents or any other person;
- (5) policies and procedures for actions to be taken in case a child is found missing from the center;
- (6) policies and procedures for the handling of children who are ill;
- (7) an up to date emergency evacuation and disaster preparedness plan approved annually by the licensing authority; the department will provide guidance on developing these plans.

D. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following:

- (1) GENERAL INFORMATION:
 - (a) mission statement;
 - (b) philosophy statement;
 - (c) program information (location, ~~licensing status~~ license information, days and hours of operation, services offered);
 - (d) name of director and how he/she may be reached;
 - (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
 - (f) daily schedule;
 - (g) expectations for parent involvement (e.g. participating as a volunteer in classroom, home visits, parent conferences, meetings/speakers, parent library or other information, etc.);
 - (h) appropriate dress for children, including request for extra change of clothes; and
 - (i) celebrating holidays, birthdays and parties.

(2) POLICIES AND PROCEDURES:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) fee payment procedures, including penalties for tardiness;
- (d) notification of absence;
- (e) fee credits, if any (e.g. for vacations, absences, etc.);
- (f) field trip policies;
- (g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (h) emergency procedures and safety policies;
- (i) snow days and school closure;
- (j) confidentiality policy;
- (k) child abuse/neglect reporting procedure; and

(l) guidance policy ~~and~~ ~~(m) copies of all forms identified in section E below~~.

E. CHILDREN'S RECORDS: A center will maintain a complete record for each child, including drop-ins, completed before the child is admitted. Records will be kept at the center for twelve (12) months after the child's last day of attendance. Records will contain at least:

- (1) PERSONAL INFORMATION:
 - (a) name of the child; date of birth, sex; home address, mailing address and telephone number;
 - (b) names of parents or guardians, parents or guardians current places of employment, addresses, pager, cellular and/or work telephone numbers;
 - (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian;
 - (d) date the child first attended the center and the date of the child's last day at the center;
 - (e) a copy of the child's up-to-date immunization record or a public health division approved exemption from the requirement;
 - (f) a record of any accidents, injuries or illnesses which require first aid or medical attention ~~and any observations of recent bruises, bites or signs of potential abuse or neglect~~ which must be reported to the parent or guardian;
 - (g) a record of observations of recent bruises, bites or signs of potential abuse or neglect, which must be reported to CYFD;

~~(g)~~ (h) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities;

~~(h)~~ (i) a record of the time the child arrived and left the center and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child;

~~and~~

~~(j)~~ (j) an enrollment agreement form which must be signed by a parent or guardian with an outline of the services and the costs being provided by the facility; and ~~(k)~~ (k) a signed acknowledgment that the parent or guardian has read and understands the parent handbook.

(2) EMERGENCY INFORMATION:

- (a) Information on any allergies or medical conditions suffered by the child.
- (b) The name and telephone number of two (2) people in the local area to contact in an emergency when a parent or guardian cannot be reached. Emergency contact numbers must be kept up to date at all times.

(c) The name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency.

(d) A document giving a center permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian.

(e) Documentation of the legal status of the child, if applicable, such as, but not limited to: restraining orders, guardianship, powers of attorney, court orders, custody by children's protective services, etc.

F. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers working more than eight (8) hours of any week and having direct contact with the children. A center will keep the file for one (1) year after the caregiver's last day of employment. Records will contain at least the following:

- (a) name, address and telephone number;
- (b) position;
- (c) current and past duties and responsibilities;
- (d) dates of hire and termination;
- (e) documentation of a ~~criminal records~~ background check and employment history verification; all persons providing care are required to sign a statement that they have, or have never had, an arrest or substantiated referral to a child protective services agency; if the person has had an arrest or a substantiated referral, they must provide the ~~licensing authority~~ CYFD with a written statement concerning the circumstances and disposition of the arrest and/or substantiated referral; an employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the ~~Criminal Records~~ Background Check and Employment History Verification provisions pursuant to

8.8.3 NMAC to continue to work directly and/or unsupervised with children;

(f) documentation of current first-aid and cardiopulmonary resuscitation training;

(g) documentation of all appropriate training by date, time, hours and area of competency;

(h) emergency contact number;

(i) universal precaution acknowledgment form;

(j) personnel action form;

(k) confidentiality form;

~~(l) W 4 and I 9;~~

~~(m)~~ (l) results of performance evaluations;

~~(n)~~ (m) administrative actions or reprimands;

~~(o)~~ (n) professional development plan[s] or a written plan for each staff member, based on the seven areas of competency that is consistent with the career lattice based on the individual's goals; and

~~(p)~~ (o) signed acknowledgment that the staff have read and understand the personnel handbook[; and

~~(q) a written plan for each staff member, based on the seven areas of competency that is consistent with the career lattice based on the individual's goals].~~

(2) A center will maintain dated weekly work schedules for the director, all staff, all care givers and volunteers and keep the records on file for at least twelve (12) months. The record will include the time the workers arrived at and left work and include breaks and lunch.

G. PERSONNEL HANDBOOK: The center will give each employee a personnel handbook that covers all matters relating to employment and includes the following critical contents:

(1) organizational chart;

(2) job descriptions of all employees by title;

(3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.

(4) yearly calendar, including meetings, holidays, professional development, etc.

(5) code of conduct;

(6) training requirements, career lattice, professional development opportunities;

(7) procedures and criteria for performance evaluations;

(8) policies on absence from work;

(9) grievance procedures;

(10) procedures for resignation or termination;

(11) copy of licensing regulations;

(12) policy on parent involvement;

(13) health policies related to

both children and staff; and

(14) policy on sexual harassment.

[8.16.2.21 NMAC - Rp, 8.16.2.21 NMAC, 02/14/05; A, 08/31/06]

8.16.2.22 PERSONNEL AND STAFFING:

A. GENERAL PERSONNEL AND STAFFING REQUIREMENTS:

(1) All care givers will have the capability to care for and supervise children.

(2) In addition to the basic requirements in 8.16.2.18 NMAC of the general provisions the licensee will be responsible for obtaining ~~[criminal records]~~ background checks on all staff, volunteers, and prospective staff and volunteers. The licensing authority will provide a copy of the regulations, fingerprint cards and instructions, and forms for recording an employment history. Care givers who work directly with children and who are counted in the staff/child ratios must be eighteen (18) years of age or older.

(3) Clerical, cooking and maintenance personnel who also care for children and are included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Care givers counted in the staff/child ratios will not have as their primary responsibility cooking, clerical or cleaning duties while caring for children.

(4) Substitutes, volunteers, and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes, volunteers, and care givers routinely employed in a center but working twenty (20) hours or fewer a week will complete half the required training hours. Such employees working more than twenty (20) hours a week will meet full training requirements. See Paragraph (2) of Subsection B of 8.16.2.32 NMAC for additional training requirements.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) DIRECTOR QUALIFICATIONS:

(a) Unless exempted under Subparagraph (b) below, a child care center will have a director who is at least twenty-one (21) years old and has proof of a current: 1) child development associate (CDA) certificate, certified child care professional credential (CCP), Montessori teacher certification, national administrator credential (NAC), one-year vocational certificate, or an associate of arts (AA) or applied science (AAS) degree in child development or early childhood education, and at least two (2) years of experience in an early childhood growth and development setting; or 2) a bachelor's degree or higher in early child-

hood education or a related field with at least one (1) year of experience in an early childhood growth and development setting. Early childhood growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(b) Current directors in a licensed center not qualified under these regulations will continue to qualify as directors as long as they continuously work as a director. Current directors having a break in employment of more than one (1) year must meet the requirements as specified in Subparagraph (a) above.

(2) TRAINING:

(a) The director will develop and document an orientation and training plan for new staff members and volunteers and will provide information on training opportunities. The director will have on file a signed acknowledgment of completion of orientation by employees, volunteers and substitutes as well as the director. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following:

(i) scope of services, activities, and the program offered by the center;

(ii) emergency first aid procedures, recognition of childhood illness and indicators of child abuse;

(iii) fire prevention measures and emergency evacuation plans;

(iv) review of licensing regulations;

(v) policies regarding discipline, child abuse reporting, and handling of complaints;

(vi) review of written policies and procedures as defined in Subsection C of 8.16.2.21 NMAC;

(vii) center/parental agreement;

(viii) sanitation procedure;

(ix) written goals of the program;

(x) personnel handbook;

(xi) parent handbook;

(xii) names and ages of children;

(xiii) names of parents;

(xiv) tour of the facility; and

(xv) introduction to other staff and parents.

(b) Effective July 1, 2005, new staff members working directly with children regardless of the number of hours per week will complete the 45-hour entry level course or approved 3-credit early care and education course or an equivalent approved

by the department prior to or within six months of employment. Existing staff will meet this requirement by December 31, 2005. Substitutes are exempt from this requirement.

(c) All staff members working directly with children and more than 20 hours per week, including the director will have at least twenty-four (24) hours of training each year. Training must address first aid, CPR, infection control and at least three (3) competency areas within one year and all seven areas within two (2) years. The competency areas are 1) child growth, development, and learning; 2) health, safety, nutrition, and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism. Training must be delivered by people who have relevant education or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department.

(d) Directors may count hours in personnel and business training toward the training requirement.

(e) Infant and toddler care givers must have at least four (4) hours of training in infant and toddler care within six (6) months of starting work. The four (4) hours will count toward the 24-hour requirement.

(f) A center will keep a training log on file with the employee's name, date of hire, and position. The log must include date of training, clock hours, competency area, source of training, and training certificate. A college credit hour in a field relevant to the competency areas listed above will be considered equivalent to a minimum of 15 clock hours. See Paragraph (4) of Subsection A of 8.16.2.22 NMAC for requirements for centers that operate less than 20 hours per week.

C. S T A F F I N G R E Q U I R E M E N T S:

(1) A director is responsible for one center only. Directors who are responsible for more than one center on the date these regulations are promulgated shall continue in that capacity. The director or co-director must be on the site of the center for a minimum of 50% of the center's core hours of operation.

(2) During any absence, the director will assign a person to be in charge and will post a notice stating the assignment.

(3) A program will maintain staff/child ratios at all times. Children must never be left unattended whether inside or outside the facility. Staff will be onsite, available and responsive to children during all hours of operation.

(4) A center will have a minimum of two staff members present at all times. If the center has less than 7 children, the second caregiver may conduct other activities such as cooking, cleaning, or bookkeeping, etc.

A center will keep a list of at least two (2) people who can substitute for any staff member. The list will include the people's names, telephone numbers, ~~criminal records~~ background check, health certificates and record of orientation.

D. S T A F F / C H I L D R A T I O S:

(1) Centers where children are grouped by age:

(a) Age in group: Six (6) weeks through twenty-four (24) months. - Staffing: One (1) adult for every six (6) children or fraction of group thereof.

(b) Age in group: Two (2) years. - Staffing: One (1) adult for every ten (10) children or fraction of group thereof.

(c) Age in group: Three (3) years. - Staffing: One (1) adult for every twelve (12) children or fraction of group thereof.

(d) Age in group: Four (4) years. B Staffing: One (1) adult for every twelve (12) children or fraction of group thereof.

(e) Age in group: Five (5) years. B Staffing: One (1) adult for every fifteen (15) children or fraction of group thereof,

(f) Age in group: Six (6) years. B Staffing: One (1) adult for every fifteen (15) children or fraction of group thereof.

(2) C E N T E R S W H E R E A G E G R O U P S A R E C O M B I N E D

(a) Age in group: Six (6) weeks through twenty-four (24) months. B Staffing: One (1) adult to every six (6) children or fraction of group thereof.

(b) Age in group: Two (2) through Four (4) years. B Staffing: One (1) adult to every twelve (12) children or fraction of group thereof.

(c) Age in group: Three (3) through Five (5) B Staffing: One (1) adult to every fourteen (14) children or fraction thereof.

(d) Age in group: Six (6) years and older. B Staffing: One (1) adult to every fifteen (15) children or fraction of group thereof.

(i) A center will schedule staff to minimize the number of primary care givers a child has during the day and the week. A child will have no more than three (3) primary, consecutive care givers in any day including care givers in the early morning and late afternoon.

(ii) The same staff member who cares for the children under age two (2) years will supervise those children when they play with ~~older children~~ children over two (2) years.

(iii) If a center groups

toddlers ages eighteen (18) to twenty-four (24) months with children ages twenty-four (24) through thirty-five (35) months, the staff/child ratio shall be maintained at 1 staff per 6 children.

[8.16.2.22 NMAC - Rp, 8.16.2.22 NMAC, 02/14/05; A, 08/31/06]

8.16.2.23 SERVICES AND CARE OF CHILDREN

A. DISCIPLINE:

(1) A center will have written policies and procedures clearly outlining disciplinary practices. Centers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Discipline will be consistent and age appropriate.

(3) Discipline will include positive guidance, redirection, and clear limits that encourage the child's ability to become self-disciplined.

(4) A center will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment, and/or

(e) unsupervised separation.

B. NAPS OR REST PERIOD: A center will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(1) Children under the age of six (6) years in the centers for more than five (5) hours will have a rest period.

(2) A center will allow children who do not sleep to get up and participate in quiet activities that do not disturb the other children.

(3) Cribs, cots or mats will be spaced at least 30 inches apart to permit easy access by adults to each child without moving cribs, cots or mats.

(4) Each child will have an individual bed, cot, mat or linens clearly labeled to ensure each child uses the same items between washing.

(5) Cots or mats will have a non-absorbent, cleanable surface. Mats will be at least three-fourths (3/4) of an inch thick. Mats, cots and linens will be laundered before being used by another child.

(6) The center will provide a crib for each infant and, when appropriate, for a toddler. No child will be allowed to sleep in

a playpen, car seat, stroller or swings. Children under the age of twelve (12) months shall be placed on their backs when sleeping unless otherwise authorized in writing by a physician. Nothing shall be placed over the head or face of a child aged twelve (12) months or younger when the child is laid down to sleep. Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician justifying the sleeping arrangement.

(7) Staff must be physically available to sleeping children at all times. Children must not be isolated for sleeping or napping in an unilluminated room unless attended by a caregiver.

(8) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping.

C. ENVIRONMENT:

(1) Environment is organized into identifiable learning centers/spaces.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members and visitors.

D. EQUIPMENT AND PROGRAM:

(1) A child care center will provide activities that encourage children to be actively involved in the learning process and to experience a variety of developmentally appropriate activities and materials.

(2) A center will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(3) Each child at a center will have a designated space for storage of clothing and personal belongings.

(4) A center will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A center will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(5) A center will provide children with toys and other materials that are safe and encourage the child's creativity, social interaction, and a balance of individual and group play.

(6) A center will post a daily activity schedule. A center will follow a consistent pattern for routine activities such as meals, snacks and rest.

(7) Children will not watch television, videotapes, or play video games for more than one (1) hour a day.

(8) Equipment and program requirements apply during all hours of operation of the licensed facility.

E. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment will be safe and securely anchored.

(2) A center will enclose the outdoor play area with a fence at least four (4) feet high and with at least one (1) latched gate available for an emergency exit.

(3) A center will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

(4) An outdoor play area for children under age two (2) years will have an area protected from the general traffic where the children can crawl in safety.

F. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters the pool.

(2) If a center has a portable wading pool:

(a) a center will drain and fill the wading pool with fresh water daily and disinfect pool before and after each use;

(b) a center will empty a wading pool when it is not in use and remove it from areas accessible to children;

(c) a center will not use a portable wading pool placed on concrete or asphalt.

(3) If a center has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children;

(c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

[8.16.2.23 NMAC - Rp, 8.16.2.23 NMAC, 02/14/05; A, 08/31/06]

8.16.2.25 HEALTH AND SAFETY REQUIREMENTS:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating;

(e) before and after feeding a

child; and

(f) after handling pets or animals.

(2) A center will label with the child's name and store separately any item used for an individual child's personal hygiene.

(3) If a center promotes tooth brushing activities, the center will store toothbrushes so that they do not drip on other toothbrushes and so that they are separate from one another, with bristles exposed to the air to dry, labeled and not in contact with any other surface.

B. FIRST AID REQUIREMENTS:

(1) A center will have on duty at all times one (1) staff member or caregiver currently certified in first aid and cardiopulmonary resuscitation (CPR).

(2) A center will keep a first-aid kit and a first-aid manual together in the center in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum, band aids, gauze pads, adhesive tape, scissors, soap, nonporous [~~latex~~] gloves, and a thermometer.

(3) A center will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A center will clean contaminated surfaces first with hot soapy water then with a disinfecting solution effective against HIV and hepatitis B.

C. MEDICATION:

(1) All staff and children's medications must be labeled. A center will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Facilities will give medication only with written permission from a parent or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the center. A center will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep and sign a written record of the dosage, date and time a child is given med-

ication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The center shall not administer expired medication. [8.16.2.25 NMAC - Rp, 8.16.2.25 NMAC, 02/14/05; A, 08/31/06]

8.16.2.27 OTHER:

A. TRANSPORTATION:

(1) When a center provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A center will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows.

(a) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(b) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(c) Children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

[e] (d) Children ~~five~~ seven years of age through twelve years of age shall be secured in a child passenger restraint device or by a seat belt.

(3) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out ~~[at least weekly]~~.

(4) Vehicles operated by the center to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees fahrenheit. If the out-

side air temperature falls below 50 degrees fahrenheit the center will ensure the vehicle is heated.

(5) A center will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The center will ensure children do not cross a street unsupervised after leaving the vehicle.

(6) No one will smoke in a vehicle used for transporting children.

(7) A second adult will accompany the driver of the vehicle when a center transports five (5) or more children under age five (5) years.

(8) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

B. FIELD TRIPS:

(1) A center will ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection C of 8.16.2.21 NMAC for requirements for permission slips.

(2) Children will not go to a private residence unless accompanied by two (2) adults.

C. PETS:

(1) A center will inform parents or guardians before pets are allowed in the center.

(2) A center will not allow pets in the kitchen, food serving, food storage areas, bathrooms, or infant room.

(3) A center will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the center.

(4) A center will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious.

D. CARE AND SERVICES FOR CHILDREN WITH SPECIAL NEEDS:

(1) Child care facilities are responsible for staff awareness of community resources for families of children with disabilities, including children under the age of five (5) years as well as those of school age. If a child is suspected of having a disability, at the director's discretion, staff must inform parents of possible resources for referral and assistance. Family Education Right and Privacy Act (FERPA) will be respected in that no referral for special needs services to an outside agency will be made without a parent's written informed consent.

(2) A child with a known disabili-

ty may be admitted to a center as instructed by parents, service, educational and/or medical plans that address emergency situations under the guidance of a primary service provider (early interventionist, school, or licensed specialist).

E. INFANTS AND TODDLERS:

(1) A center will not admit any child under the age of six (6) weeks except with the written approval of a licensed physician.

(2) A center will care for children under age two (2) years in rooms separate from those used by older children. Children age six (6) weeks to twelve (12) months may be in the same room with children age thirteen (13) to twenty-four (24) months, when they are physically separated from the older children. A center may group toddlers ages eighteen (18) to twenty-four (24) months with children ages twenty-four (24) through thirty-five (35) months.

(3) Throughout the day, a caregiver will give each infant and toddler physical contact and attention. A caregiver will hold, talk to, sing to and take inside and outside walks with the child. A caregiver will respond immediately to all cries of infants and to the cries of all children within two (2) minutes.

(4) A caregiver will use routine activities such as nap time, feeding, diapering and toileting as opportunities for language development and other learning.

(5) Each infant shall be allowed to form and observe his/her own pattern of feeding, sleeping and waking periods.

(6) A center will arrange the sleeping and play areas so that children in the play area do not disturb sleeping children.

(7) Infants shall either be held or fed sitting up for bottle-feeding. Infants unable to sit shall always be held for bottle-feeding. Bottle propping or allowing a child to sleep with a bottle in their mouth shall not be permitted. The carrying of bottles and sipper cups by young children throughout the day and/or night shall not be permitted.

(8) Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

F. DIAPERING AND TOILETING:

(1) A caregiver will plan toilet training with a parent so the toilet routine is consistent. A center will not attempt to toilet train a child who is not developmentally ready.

(2) A center will change wet and soiled diapers and clothing promptly. Staff members will wear non-porous, single-use gloves when changing a diaper and wash

their hands after changing a diaper.

(3) A center will have a change of clothes on hand, including dry, clean clothing and diapers sufficient to meet the needs of each child. A center will label diapers and diapering supplies for each child and store them properly. Diaper bags will be inaccessible to children. Soiled diapers will be stored in a secure container with a tight-fitting lid to assure proper hygiene and control of odors.

(4) A caregiver will change a child's diaper on a clean, safe, waterproof surface and discard any disposable cover and disinfect the surface after each diaper change.

G. EQUIPMENT:

(1) Cribs will meet federal standards and be kept in good repair. The center will not use plastic bags or lightweight plastic sheeting to cover a mattress and will not use pillows in cribs.

(2) Toys and equipment must be safe, durable, and easy to clean, non-toxic and disinfected daily. Toys that are mouthed by infants and toddlers will be cleaned after mouthing by one child before other children do the same.

(3) A center will not use accordion-style baby gates.

H. NIGHT CARE:

(1) A center that provides night care will have fifty (50) square feet of activity area per child for night care.

(2) Staff will be awake and immediately available to children who need attention during the night.

(3) The beds and cots provided for children shall be completely furnished with mattress, waterproof mattress protectors, sheets under and over the child, blanket, pillow and pillowcase.

(4) Linens shall be changed immediately in case of soiling.

(5) The same menu shall not be used for lunch and supper.

~~[F.] SILVER AND GOLD CENTERS: Silver and gold centers must meet all basic licensing standards. Providers that had silver and gold licenses with no sanctions on June 30, 1999 must continue to conform to the standards for silver and gold licensing dated March 31, 1997 in order to receive augmented child care reimbursement rates.]~~

[F.] I. ACCREDITED CENTERS: Accredited centers must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the center's accrediting body of the center's failure to meet and maintain licensing standards.

[8.16.2.27 NMAC - Rp, 8.16.2.27 NMAC, 02/14/05; A, 08/31/06]

8.16.2.30 LICENSURE:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee.

(2) A home will submit a new application to the licensing authority before changing anything required to be stated on the license such as dates, capacity, operator, address, etc.

(3) ~~[CRIMINAL RECORDS]~~ BACKGROUND CHECK: In addition to the basic requirements at 8.16.2.18 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's ~~[Criminal Records]~~ Background Check and Employment History Verification provisions (8.8.3 NMAC), regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining ~~[criminal records]~~ background checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home as per the requirements outlined in the department's most current version of the ~~[Criminal Records]~~ Background Check and Employment History Verification provisions. All requirements of the current ~~[Criminal Records]~~ Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(4) ZONING AND OTHER APPROVALS: An applicant will have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority if applicable;

(c) current written approval from the New Mexico environment department or other environmental health authority for: 1. Private water supply, if applicable; 2. Private waste or sewage disposal, if applicable; and 3. A swimming pool, if applicable.

(5) SCHEDULE: All applications for a new license will include a description of the home's proposed activities and schedule.

(6) INITIAL SURVEY: The licensing authority will schedule a survey for a home when it receives a complete application with all supporting documents.

B. CAPACITY OF A HOME:

(1) The number of children in a

home, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the licensed home, including the caregiver's own children under the age of six (6), in the capacity of a home, even if the children are on a field trip or other outing outside the home. The licensed capacity must not be exceeded by the presence of school age children.

(3) A home may be licensed for up to twelve (12) children.

(4) A home licensed as a family day care home under these regulations providing care for a maximum capacity of six (6) children may care for up to four (4) children under the age of two (2) providing a second caregiver is present in the home and the home is licensed to provide such care. A home licensed as a group day care home under these regulations providing care for a maximum of twelve (12) children may care for up to four (4) children under age two (2) providing a second caregiver is present in the home and the home is licensed to provide such care.

(5) A home must have thirty-five (35) square feet of activity and sleeping space per child, excluding bathrooms, kitchens, halls and other built-in fixtures and offsets, with total capacity limited to no more than twelve (12) children. A home must have at least one bathroom with a toilet and sink.

(6) The home will have an outdoor play area, which must be fenced in.

C. NOTIFICATIONS:

(1) INCIDENT REPORTS: A home will report immediately by phone to the licensing authority and follow-up in writing any incident that has or could threaten the health and safety of children and staff members, such as but not limited to:

- (a) a lost or missing child;
- (b) the death of a child;
- (c) the abuse or neglect of a child;
- (d) accidents, illness, or injuries

that require medical care beyond on-site first aid;

(e) fire, flood, or other natural disaster that creates structural damages to a home or poses a health hazard;

(f) any of the illnesses on the current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the New Mexico department of health; or,

(g) any legal action against a home or staff members related to the care and custody of children.

(2) A home will notify parents or guardians in writing of any incident, including notifiable illnesses, that will or could threaten the health or safety of children in the home. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.30 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately by the licensing authority to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.
[8.16.2.30 NMAC - Rp, 8.16.2.30 NMAC, 02/14/05; A, 08/31/06]

8.16.2.31 ADMINISTRATIVE REQUIREMENTS:

A. ADMINISTRATIVE RECORDS: A licensee will post the child care home license in an area readily visible to parents and visitors. The licensee will also keep on file:

- (1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the home;
- (2) the current child care regulations;
- (3) the ~~[discipline]~~ guidance policy;
- (4) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health; and
- (5) an up to date emergency evacuation and disaster preparedness plan approved annually by the licensing authority; the department will provide guidance on developing these plans.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

- ~~(1) mission statement; that describes:~~
 - ~~(a) services the program aspires to provide; and~~
 - ~~(b) whom the program aspires to serve.~~
- ~~(2) philosophy statement; that includes:~~
 - ~~(a) beliefs about children's growth, development and behavior;~~
 - ~~(b) what and how children learn;~~
 - ~~(c) adults roles in children's learning, specifically how adults guide or control the teaching and learning process; and~~
 - ~~(d) a description of the environment and how it contributes to learning.~~
- ~~(3) curriculum statement; which includes:~~
 - ~~(a) play as the primary mode of learning;~~
 - ~~(b) active engagement of children;~~
 - ~~(c) opportunities to make choices;~~
 - ~~(d) opportunities to experiment and explore; and~~
 - ~~(e) promotion of children's social~~

~~emotional development.]~~

- ~~(1) mission statement;~~
- ~~(2) philosophy statement; and~~
- ~~(3) curriculum statement.~~

C. PARENT HANDBOOK: All facilities using these regulations must have a parent handbook which includes the following:

- (1) GENERAL INFORMATION:
 - (a) mission statement;
 - (b) philosophy statement;
 - (c) program information (location, ~~[licensing status]~~ license information, days and hours of operation, services offered);
 - (d) name of ~~[director]~~ licensee and how he/she may be reached;
 - (e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);
 - (f) daily schedule;
 - (g) expectations for parent involvement (e.g. participating as a volunteer in classroom, home visits, parent conferences, meetings/speakers, parent library or other information, etc.);
 - (h) appropriate dress for children, including request for extra change of clothes; and
 - (i) celebrating holidays, birthdays and parties.

(2) POLICIES AND PROCEDURES:

- (a) enrollment procedures;
- (b) disenrollment procedures;
- (c) fee payment procedures, including penalties for tardiness;
- (d) notification of absence;
- (e) fee credits, if any (e.g. for vacations, absences, etc.);
- (f) field trip policies;
- (g) health policies (program's policies on admitting sick children, when children can return after an illness, administering medication, and information on common illnesses);
- (h) emergency procedures and safety policies;
- (i) snow days and school closure;
- (j) confidentiality policy;
- (k) child abuse/neglect reporting procedure; and
- (l) guidance policy; ~~and~~
- ~~(m) copies of all forms identified in subsection D below].~~

D. CHILDREN'S RECORDS: A home will maintain a complete record for each child, including drop-ins, completed before the child is admitted and kept at the home for twelve (12) months after the child's last day of attendance. Records will contain at least:

- (1) PERSONAL INFORMATION:
 - (a) name of the child, date of birth, sex, home address, mailing address

and telephone number;

- (b) names of the parents or guardians, the parents or guardians current places of employment, addresses, pager, cellular and/or work telephone numbers;
 - (c) a list of people authorized to pick up the child and an authorization form signed by parent or guardian;
 - (d) date the child first attended the home and the date of the child's last day at the home;
 - (e) a copy of the child's up-to-date immunization record or a public health division-approved exemption from the requirement;
 - (f) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or potential signs of abuse or neglect, both of which must be reported to a parent or guardian;
 - (g) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities;
 - (h) a record of the time the child arrived and left the home and dates of attendance initiated by a parent, guardian, or person authorized to pick up the child; and
 - (i) an enrollment agreement must be signed by a parent or guardian with an outline of the services and the costs being provided by the home.
- (2) EMERGENCY INFORMATION:
- (a) information on any allergies or medical conditions suffered by the child;
 - (b) the name and telephone number of two (2) people to contact in the local area in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times.
 - (c) the name and telephone number of a physician or emergency medical center authorized by a parent or guardian to contact in case of illness or emergency;
 - (d) a document giving a home permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian; and
 - (e) documentation of the legal status of the child, if applicable, such as, but not limited to: restraining orders, guardianship, powers of attorney, court orders custody by children's protective services, etc.

E. PERSONNEL RECORDS: A home will keep the following records on file and make them available to the licensing authority.

- (1) Documentation of a ~~[criminal records]~~ background check and employment history verification for all care givers and all adults living in the home. All persons providing care are required to sign a

statement that they have or have never had an arrest or substantiated referral to a child protective services agency. If the person has had an arrest or a substantiated referral, they must provide the licensing authority with a written statement concerning the circumstances and disposition of the arrest and/or substantiated referral. An employer will not allow any employee or any other adult living in the home to be involved in an incident which would disqualify that employee under the department's most current version of the ~~[Criminal Records]~~ Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC to continue to work directly and/or unsupervised with children.

(2) A record of the time the second care givers arrived at and left work, to include breaks and lunch.

F. PERSONNEL HANDBOOK: The provider will give each non-resident employee a personnel handbook that covers all matters relating to employment and includes the following critical contents:

~~[(1) organizational chart;]~~

~~[(2)](1)~~ job descriptions of all employees by title

~~[(3)](2)~~ benefits, if provided, including vacation days, sick leave, professional development days, health insurance, break times, etc.;

~~[(4)](3)~~ yearly calendar, including meetings, holidays, professional development, etc.;

~~[(5)](4)~~ code of conduct;

~~[(6)](5)~~ training requirements, ~~[career lattice,]~~ professional development opportunities;

~~[(7)](6)~~ procedures and criteria for performance evaluations;

~~[(8)](7)~~ policies on absence from work;

~~[(9) grievance procedures;]~~

~~[(10)](8)~~ procedures for resignation or termination;

~~[(11)](9)~~ copy of licensing regulations;

~~[(12)](10)~~ policy on parent involvement;

~~[(13)](11)~~ health policies related to both children and staff; and

~~[(14)](12)~~ policy on sexual harassment.

[8.16.2.31 NMAC - Rp, 8.16.2.31 NMAC, 02/14/05; A, 09/15/05; A, 08/31/06]

8.16.2.32 PERSONNEL AND STAFFING REQUIREMENTS:

A. GENERAL PERSONNEL AND STAFFING REQUIREMENTS:

(1) All care givers will have the capability to care for and supervise children.

(2) In addition to the basic requirements in 18.16.2.18 NMAC of the

general provisions, the licensee will be responsible for obtaining ~~[criminal records]~~ background checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home. The licensing authority will provide a copy of the regulations, fingerprint cards and instructions, and forms for recording an employment history. Care givers who work directly with children and who are counted in the staff/child ratios must be eighteen (18) years of age or older.

(3) Substitutes, volunteers, and part-time care givers counted in the staff/child ratios will meet the same requirement as regular staff members except for training requirements. Substitutes and care givers routinely employed in a home but working twenty (20) hours or less a week will complete half the required training hours. Such employees working more than twenty (20) hours a week will meet full training requirements.

B. STAFF QUALIFICATIONS AND TRAINING:

(1) A home will keep a training log on file including the date of the training, name of caregiver, hours earned, subject/competency area, source of training, and training certificates.

(2) Care givers working for a home will receive at least twelve (12) documented hours of training during each year, including six (6) hours in child growth and development and three (3) hours in health, safety, nutrition, and infection control. The three remaining training hours must be within the seven competency areas. The competency areas are: 1) child growth, development and learning; 2) health, safety, nutrition and infection control; 3) family and community collaboration; 4) developmentally appropriate content; 5) learning environment and curriculum implementation; 6) assessment of children and programs; and 7) professionalism. A caregiver cannot count more than three (3) hours in first aid or CPR training toward the total hours required. Training must be delivered by people who have education and/or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department. See Paragraph (3) of Subsection A of 8.16.2.32 NMAC for requirements for part-time employees.

(3) Infant and toddler care givers must have at least two (2) hours of training in infant and toddler care within six (6) months of starting work. The two (2) hours will count toward the 12-hour requirement in ~~[subsection]~~ paragraph (2).

(4) Effective July 1, 2005, the primary caregiver will complete the 45-hour entry level course or approved 3-credit early care and education course or an equivalent approved by the department prior to or

within six months of employment.

(5) A home must have at least one (1) person on duty at all times who is certified in first aid and cardio-pulmonary resuscitation (CPR).

C. STAFFING REQUIREMENTS:

(1) A home licensed to provide care for six (6) or fewer children will have at least one (1) caregiver in the home at all times. A home licensed to provide care for more than two (2) children under the age of two (2) will have at least two (2) caregivers in the home at all times.

(2) A home licensed for seven (7) to twelve (12) children will have at least two (2) care givers at the home when more than six (6) children are present or when more than two (2) children under the age of two (2) are present.

(3) Children will never be left unattended. A caregiver will be with the children at all times whether activities are inside or outside of the home. Providers will be onsite, available and responsive to children during all hours of operation.

[8.16.2.32 NMAC - Rp, 8.16.2.32 NMAC, 02/14/05; A, 08/31/06]

8.16.2.33 SERVICES AND CARE OF CHILDREN:

A. DISCIPLINE:

(1) A home will have written policies and procedures clearly outlining disciplinary practices. Care-givers will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Discipline will be consistent and age appropriate.

(3) Discipline will include positive guidance, redirection, and clear limits that encourage the child's ability to become self-disciplined.

(4) A home will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting, pinching or putting anything on or in a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; and

(e) unsupervised separation.

B. NAPS OR REST PERIOD:

(1) A home will provide physical care appropriate to each child's developmental needs that will include a supervised rest period.

(2) Each child will have an individual bed, cot, mat or linens.

(3) Cribs, cots or mats will be spaced at least 30 inches apart to permit easy access by adults to each child. Cots or mats will have a nonabsorbent, cleanable surface. Mats will be at least three-fourths (3/4) of an inch thick. Mats, cots and linens must be laundered before being used by another child.

(4) The home will provide a crib for each infant and, when appropriate, for a toddler. No child will be allowed to sleep in a playpen, car seat, stroller or swing. Children with disabilities or medical conditions that require unusual sleeping arrangements will have written authorization from a parent or physician justifying the sleeping arrangement.

(5) Illumination equivalent to that cast by a soft night light shall be operational in areas that are occupied by children who are napping or sleeping.

C. ENVIRONMENT:

(1) Environment is organized into identifiable learning centers/spaces.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

~~[(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members, and visitors.]~~

D. EQUIPMENT AND PROGRAM:

(1) A home will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(2) A home will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A home will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(3) A home will provide children with toys and other materials that are safe, developmentally appropriate, and encourage the child's creativity, social interaction, and a balance of individual and group play.

(4) A home will post a daily activity schedule. A home will follow a consistent pattern for routine activities such as meals, snacks and rest.

(5) Children will not watch television, videotapes, or play video games for more than one (1) hour a day.

(6) Equipment and program requirements apply during all hours of operation of the licensed facility.

E. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment will be safe and securely anchored.

(2) A home will enclose the out-

door play area with a fence at least four (4) feet high and with at least one (1) latched gate available for an emergency exit.

(4) A home will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

F. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters a pool.

(2) If a home has a portable wading pool:

(a) a home will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a home will empty a wading pool when it is not in use and remove it from areas accessible to children;

(c) a home will not use a portable wading pool placed on concrete or asphalt.

(3) If a home has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and the number of adults present will be increased to ensure adequate safety for the ages, abilities and type of water hazard in use.

[8.16.2.33 NMAC - Rp, 8.16.2.33 NMAC, 02/14/05; A, 08/31/06]

8.16.2.34 FOOD SERVICE:

A. MEAL PATTERN REQUIREMENTS: All foods prepared by the home will conform to the schedule for meal patterns and supplemental feedings of the USDA's child care food program.

B. MEALS AND SNACKS:

(1) A home will provide a child a meal or snack at least every three (3) hours except when the child is sleeping at night.

(2) A home will serve if necessary a child a therapeutic or special diet with a written prescription/diet order from a physician or a registered or licensed dietician. Diet orders must be complete and descriptive, and not subject to interpretation by the care givers.

(3) A home will serve on a daily basis:

(a) full-strength, 100-percent natural juice; the use of fruit drinks containing less than 100% juice or artificially flavored drinks for meals and/or snacks is prohibited;

(b) only whole, pasteurized fluid milk shall be served to children younger than 24 months of age who are not on for-

mula or breast milk; reduced fat, low fat, or skim milk may be served to children who are 2 years and older; and

(c) a home will include a variety of fruits and vegetables on their menus; homes serving main meals must include a vitamin C fruit/vegetable or juice daily and a vitamin A rich fruit/vegetable or juice at least 3 times a week.

(4) A home will vary snacks each day and will include a selection of two (2) different food group components from the four (4) food group components.

C. MENUS: Weekly menus must be dated and posted in an area easily visible to parents.

D. KITCHENS:

(1) A home will not allow children in the kitchen except under careful supervision.

(2) A food preparer will thoroughly wash all raw fruits and vegetables before cooking or serving.

(3) A home will serve food promptly and refrigerate immediately after use. Foods served will meet the nutritional needs of the infant or toddler. Foods will have the proper texture and consistency for each infant served.

(4) A home will protect food and drink by properly storing items in an airtight container or by wrapping them. A home will label and date all leftover food.

(5) If food is brought from the child's home, a home will label it with the child's name and refrigerate if necessary. A home will label and refrigerate bottles of infant formula or breast milk. Labeling is not necessary if only one child is using bottles.

(6) A home will keep food requiring refrigeration, including formula, at 41 degrees (fahrenheit) or below, and frozen food at 0 degrees (fahrenheit) or below.

(7) Refrigerators and separate freezers will have working thermometers.

(8) A home will protect all food from insects, rodents and other vermin.

(9) A home will discard any leftover milk or formula, rinse bottles after use and disinfect bottles before reuse.

(10) A home will sanitize eating utensils, dishes and cups before re-use by washing them in a dishwasher or by completing the following steps: 1) wash with soapy water; 2) rinse with clean warm water; and 3) sanitize using two ounces of bleach to one gallon of water or a bleach-equivalent product approved by CYFD.

(11) A home will use cleaning materials for the kitchen and food preparation areas only in the kitchen and will store the materials separately from food.

E. MEAL TIMES:

(1) A home will equip dining areas with tables, chairs, eating utensils and

dishes appropriate to the age of the children served. Areas will be disinfected before and after each use.

(2) A home will provide sanitary cups or glasses or a drinking fountain for drinking water. Infants and toddlers shall be offered water from a cup. Toddlers shall be encouraged to hold and drink from a cup, use a spoon, and to use their fingers for self-feeding. A home will not allow children to share drinking or eating utensils.

(3) Time allowed for meals shall enable children to eat at a reasonable rate. [8.16.2.34 NMAC - Rp, 8.16.2.34 NMAC, 02/14/05; A, 08/31/06]

8.16.2.35 HEALTH AND SAFETY REQUIREMENTS:

A. HYGIENE:

(1) Children and staff members will wash their hands with soap and warm running water as needed. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(a) after using a toilet, assisting a child with toilet use, or changing a diaper;

(b) before and after caring for a sick child;

(c) before any food service activity, including setting the table;

(d) before and after eating or feeding a child; and

(e) after handling pets or animals.

(2) A home will label with the child's name and store separately any item used for an individual child's personal hygiene.

B. FIRST AID REQUIREMENTS:

(1) A home will keep a first-aid kit and a first-aid manual together in the home in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, at a minimum: band aids, gauze pads, adhesive tape, scissors, soap, non-porous [~~latex~~] gloves, and a thermometer.

(2) A home will treat blood spills cautiously and promptly disinfect the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A home will clean contaminated surfaces first with hot soapy water then with a disinfecting solution, which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A home will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Homes will give medication only with written permission from parents or guardian, to be administered according to

written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the home. A home will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep and sign a written record of the dosage, date and time a child is given medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The home shall not administer expired medication.

D. ILLNESS AND NOTIFIABLE DISEASES:

(1) Children or staff members absent due to any notifiable disease will not return to the home without a signed statement from a physician.

(2) A home will separate and constantly observe a child who becomes sick at the home and promptly notify a parent or guardian of the child's illness.

(3) A home will send a child home when:

(a) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness; or

(b) the caregiver observes signs of contagious disease or severe illness.

[8.16.2.35 NMAC - Rp, 8.16.2.35 NMAC, 02/14/05; A, 08/31/06]

8.16.2.36 OTHER:

A. TRANSPORTATION:

(1) When a home provides transportation to children, it is responsible for the care of children from the time of pick up to delivery to a responsible adult. All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A home will license all vehicles used for transporting children and will meet all applicable state vehicle laws. A child shall be transported only if the child is properly secured in a child passenger restraint device or by a safety belt as follows:

(a) Children less than one year of

age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag.

(b) Children one year of age through four years of age, regardless of weight, or children who weigh forty pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards.

(c) Children five years of age through six years of age, regardless of weight, or children who weigh less than sixty pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards.

~~(c)~~ (d) Children [~~five~~] seven years of age through twelve years of age shall be secured in a child passenger restraint device or by a seat belt.

(3) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out [~~at least weekly~~].

(4) A home will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The home will ensure children do not cross a street unsupervised after leaving the vehicle.

(5) No one will smoke in a vehicle used for transporting children.

(6) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility.

B. FIELD TRIPS:

(1) A home will ensure the children's safety on field trips and excursions. See Subparagraph (g) of Paragraph (1) of Subsection B of 8.16.2.31 NMAC for information on permission slips.

(2) Children will not go to a private residence other than the licensed home unless accompanied by two (2) adults.

C. PETS:

(1) A home will inform parents or guardians before pets are in the home.

(2) A home will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence in the home.

(3) A home will not allow on the premises pets or other animals that are

undomesticated, dangerous, contagious or vicious.

[8.16.2.36 NMAC - Rp, 8.16.2.36 NMAC, 02/14/05; A, 08/31/06]

8.16.2.40 LICENSURE:

A. LICENSING REQUIREMENTS:

(1) APPLICATION FORM: An applicant will complete an application form provided by the licensing authority and include payment for the non-refundable application fee.

(2) A program will submit a new application to the licensing authority before changing anything that is stated on the license such as dates, capacity, director, address, etc.

(3) ~~[CRIMINAL RECORDS]~~ BACKGROUND CHECK: In addition to the basic requirements at 8.16.2.18 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the most current version of the department's ~~[Criminal Records]~~ Background Check and Employment History Verification provisions (8.8.3 NMAC), regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining ~~[criminal records]~~ background checks on all staff, volunteers, and prospective staff and volunteers, and all adults residing in the home as per the requirements of the most current version of the department's ~~[Criminal Records]~~ Background Check and Employment History Verification provisions. All requirements of the current ~~[Criminal Records]~~ Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC must be met prior to the issuance of an initial license.

(4) ZONING, BUILDING AND OTHER APPROVALS: An applicant will use the approvals provided to the schools and community centers as long as the approvals are current according to the applicable department's requirements. Acceptable documents will be provided to the licensing authority before licensure. Otherwise, an applicant will have:

(a) current written zoning approval from the appropriate city, county or state authority;

(b) current written building approval, such as a certificate of occupancy, from the appropriate city, county or state authority;

(c) current written approval of the state fire marshal office or other appropriate city, county or state fire-prevention authority; and

(d) current written approval from the New Mexico environment department

or other environmental health authority for:
(i) a kitchen, if meals are prepared and served on site in the program;

(ii) private water supply, if applicable;

(iii) private waste or sewage disposal, if applicable; and,

(iv) a swimming pool, if applicable.

(5) ACCESS REQUIREMENTS FOR INDIVIDUALS WITH DISABILITIES IN NEW FACILITIES: Accessibility for individuals with disabilities is provided in all new facilities and will include the following.

(a) Main entry into the facility is level or has a ramp to allow for wheelchair access.

(b) Building layout allows for access to the main activity area.

(c) Access to at least one bathroom is required to have a door clearance of 32 inches. The toilet unit also provides a 60-inch diameter turning radius.

(d) If ramps are provided to the building, the slope of each ramp is at least a 12-inch horizontal run for each inch of vertical rise.

(e) Ramps exceeding a six-inch rise are provided with handrails.

(f) Requirements contained herein are minimum and additional disability requirements may apply depending on the size and complexity of the facility.

(6) SCHEDULE: All applications for a new license will include a description of the programs proposed activities and schedule.

(7) INITIAL SURVEY: The licensing authority will schedule a survey for a program when it receives a complete application with all supporting documents.

B. CAPACITY OF A PROGRAM:

(1) The number of children in a program, either in total or by age, will not exceed the capacity stated on the license.

(2) The licensing authority will count all children in the care of the program even if the children are on a field trip or other outing outside the program site.

(3) A program must meet the following space requirements:

(a) Thirty-five (35) square feet of indoor activity space measured wall to wall on the inside for each child in a program, excluding single-use areas, such as restrooms, kitchens, halls and storage areas, and excluding offsets and built-in fixtures.

(b) A program must have an outdoor activity space.

C. NOTIFICATIONS:

(1) INCIDENT REPORTS: A program will report immediately by phone to the licensing authority and follow-up in

writing any incident that has or could threaten the health and safety of children and staff members, such as but not limited to:

(a) a lost or missing child;

(b) the death of a child;

(c) the abuse or neglect of a child;

(d) accidents, illness, or injuries that require medical care beyond on-site first aid;

(e) fire, flood, or other natural disaster that creates structural damages to a program or poses a health hazard;

(f) any of the illnesses on the current list of Notifiable Diseases and Communicable Diseases published by the office of epidemiology of the New Mexico department of health; or

(g) any legal action against a program or staff members related to the care and custody of children.

(2) A program will notify parents and guardians in writing of any incident, including notifiable illnesses that has or could threaten the health or safety of children in the program. Incidents include, but are not limited to, those listed in Paragraph (1) of Subsection C of 8.16.2.40 NMAC.

(3) Incident reports involving suspected child abuse and neglect must be reported immediately by the licensing authority to children's protective services and local law enforcement. The licensing authority follows written protocols/procedures for the prioritization, tracking, investigation and reporting of incidents, as outlined in the complaint investigation protocol and procedures.

[8.16.2.40 NMAC - Rp, 8.16.2.40 NMAC, 02/14/05; A, 08/31/06]

8.16.2.41 ADMINISTRATIVE REQUIREMENTS:

A. ADMINISTRATION RECORDS: A licensee will keep on file, post in a clearly visible location and make available to the licensing authority:

(1) all licenses, certificates, and most recent inspection reports of all state and local government agencies with jurisdiction over the program;

(2) the current child care regulations;

(3) dated weekly menus for meals and snacks;

(4) the ~~[discipline]~~ guidance policy; and

(5) the current list of notifiable diseases and communicable diseases published by the office of epidemiology of the New Mexico department of health.

B. MISSION, PHILOSOPHY AND CURRICULUM STATEMENT: All licensed facilities must have a:

~~[(1) mission statement, that describes:~~

~~(a) services the program aspires~~

to provide; and

~~(b) whom the program aspires to serve.~~

~~(2) philosophy statement; that includes:~~

~~(a) beliefs about children's growth, development and behavior;~~

~~(b) what and how children learn;~~

~~(c) adults roles in children's learning, specifically how adults guide or control the teaching and learning process; and~~

~~(d) a description of the environment and how it contributes to learning.~~

~~(3) curriculum statement; which includes:~~

~~(a) play as the primary mode of learning;~~

~~(b) active engagement of children;~~

~~(c) opportunities to make choices;~~

~~(d) opportunities to experiment and explore; and~~

~~(e) promotion of children's social emotional development.]~~

~~(1) mission statement;~~

~~(2) philosophy statement; and~~

~~(3) curriculum statement.~~

C. PARENT HANDBOOK:

All facilities using these regulations must have a parent handbook which includes the following.

(1) GENERAL INFORMATION:

(a) mission statement;

(b) philosophy statement;

(c) program information (location, ~~licensing status~~ license information, days and hours of operation, services offered);

(d) name of director and how he/she may be reached;

(e) meals, snacks and types of food served (or alternatively, guidelines for children bringing their own food);

(f) daily schedule;

(g) expectations for parent involvement (e.g. participating as a volunteer in classroom, home visits, parent conferences, meetings/speakers, parent library or other information, etc.);

(h) appropriate dress for children, including request for extra change of clothes; and

(i) celebrating holidays, birthdays and parties.

(2) POLICIES AND PROCEDURES:

(a) enrollment procedures;

(b) disenrollment procedures;

(c) fee payment procedures, including penalties for tardiness;

(d) notification of absence;

(e) fee credits, if any (e.g. for vacations, absences, etc.);

(f) field trip policies;

(g) health policies (program's policies on admitting sick children, when

children can return after an illness, administering medication, and information on common illnesses);

(h) emergency procedures and safety policies;

(i) snow days and school closure;

(j) confidentiality policy;

(k) child abuse/neglect reporting procedure; and

(l) guidance policy[; and

~~(m) copies of all forms identified in subsection D below].~~

D. CHILDREN'S RECORDS: A program will maintain a complete record for each child, including drop-ins, to be completed before the child is admitted. Records will be kept at the program for twelve (12) months after the child's last day of attendance. Records will contain at least:

(1) PERSONAL INFORMATION:

(a) name of the child; date of birth, sex; home address, mailing address and telephone number;

(b) names of the parents or guardians, the parents or guardian's current places of employment, addresses, and pager, cellular and/or work telephone numbers;

(c) a list of people authorized to pick up the child and an authorized form signed by parent or guardian;

(d) date the child first attended the program and the date of the child's last day at the program;

(e) a record of any accidents, injuries or illnesses that require first aid or medical attention and any observations of recent bruises, bites or signs of abuse or neglect, both of which must be reported to a parent or guardian;

(f) written authorization from the child's parent or guardian to remove a child from the premises to participate in off-site activities;

(g) a record of the time the child arrived and left the program and dates of attendance initialed by a parent, guardian, or person authorized to pick up the child; and

(h) an enrollment agreement; this form will be signed by a parent or guardian with an outline of the services and the costs.

(2) EMERGENCY INFORMATION:

(a) information on any allergies or medical conditions suffered by the child; the name and telephone number of two (2) people in the local area to contact in an emergency when a parent or guardian cannot be reached; emergency contact numbers must be kept up to date at all times;

(b) the name and telephone number of a physician or emergency medical facility authorized by a parent or guardian to contact in case of illness or emergency;

(c) a document giving a program permission to transport the child in a medical emergency and an authorization for medical treatment signed by a parent or guardian;

(d) documentation of the legal status of the child, if applicable, such as, but not limited to: restraining orders, guardianship, powers of attorney, court orders, custody by children's protective services, etc.; and

(e) all licensed child care programs must maintain an up to date emergency evacuation and disaster preparedness plan approved annually by the licensing authority; the department will provide guidance on developing these plans.

E. PERSONNEL RECORDS:

(1) A licensee will keep a complete file for each staff member, including substitutes and volunteers having direct contact with the children. A program will keep the file for one (1) year after the caregiver's last day of employment. Records will contain at least the following:

(a) name, address and telephone number;

(b) position;

(c) current and past duties and responsibilities;

(d) dates of hire and termination;

(e) documentation of a ~~criminal records~~ background check and employment history verification; all persons providing care are required to sign a statement that they have or have never had an arrest or substantiated referral to a child protective services agency; if the person has had an arrest or a substantiated referral, they must provide the licensing authority with a written statement concerning the circumstances; an employer will not allow any employee involved in an incident which would disqualify that employee under the department's most current version of the ~~Criminal Records~~ Background Check and Employment History Verification provisions pursuant to 8.8.3 NMAC to continue to work directly and/or unsupervised with children;

(f) documentation of first-aid and cardiopulmonary resuscitation training;

(g) documentation of all appropriate training by date, time, hours and area of competency; and

(h) emergency contact number.

(2) A program will maintain dated weekly work schedules for the director, all staff and all care givers and keep the records on file for at least twelve (12) months. The record will include the time the employee arrived at and left work and include breaks and lunch.

F. PERSONNEL HANDBOOK: The provider will give each non-resident employee a personnel handbook

that covers all matters relating to employment and includes the following critical contents:

- (1) organizational chart;
- (2) job descriptions of all employees by title;
- (3) benefits, including vacation days, sick leave, professional development days, health insurance, break times, etc.;
- (4) yearly calendar, including meetings, holidays, professional development, etc.;
- (5) code of conduct;
- (6) training requirements, career lattice, professional development opportunities;
- (7) procedures and criteria for performance evaluations;
- (8) policies on absence from work;
- (9) grievance procedures;
- (10) procedures for resignation or termination;
- (11) copy of licensing regulations;
- (12) policy on parent involvement;
- (13) health policies related to both children and staff; and
- (14) policy on sexual harassment. [8.16.2.41 NMAC - Rp, 8.16.2.41 NMAC, 02/14/05; A, 09/15/05; A, 08/31/06]

8.16.2.42 PERSONNEL AND STAFFING:

A. PERSONNEL AND STAFFING REQUIREMENTS GENERAL:

- (1) All care givers will have the capability to care for and supervise children.
- (2) In addition to the basic requirements in 8.16.2.18 NMAC of the general provisions an applicant will apply for a national criminal records check. The licensing authority will provide a copy of the regulations, fingerprint cards and instructions, and forms for recording an employment history. The licensee will be responsible for obtaining ~~[criminal records]~~ background checks on all staff, volunteers, and prospective staff and volunteers. Care givers (staff members) who work directly with children and who are counted in the staff/child ratios must be eighteen (18) years of age or older.
- (3) Clerical, cooking and maintenance personnel included in the staff/child ratio will have a designated schedule showing their normal hours in each role. Care givers counted in the staff/child ratios will not be responsible for cooking, clerical or cleaning duties while caring for children.
- (4) Substitutes, volunteers and part-time care givers counted in the staff/child ratios will meet the same require-

ment as regular staff members except for training requirements. Substitutes and care givers routinely employed in a facility but working twenty (20) hours or fewer a week will complete half the required training hours. Such employees working more than twenty (20) hours a week will meet full training requirements. See Paragraph (3) of Subsection C of 8.16.2.42 NMAC for additional training requirements.

B. STAFF QUALIFICATIONS:

(1) Unless exempted under Paragraph 3 below, an out of school time program will have an administrator/director who is at least twenty-one (21) years old and has proof of a current copy of:

(a) a child development associate (CDA) certificate, a certified child care professional credential (CCP), a Montessori teacher, a national administrator credential (NAC) or an associate of arts or applied science degree in child development or early childhood education and at least two (2) years of experience in an early childhood growth and development setting; a school-age child care growth and development setting; or

(b) a bachelor's degree or higher in early childhood education or a related field with at least one (1) year of experience in an early childhood growth and development setting or a school-age child care growth and development settings include, but are not limited to, licensed or registered family child care programs, licensed center-based early childhood education and development programs, and family support programs.

(2) Every site of an out of school time program will have a site director who has at least a high school diploma or GED and proof of at least three (3) years of experience working with children.

(3) Program administrators and site directors employed in a licensed program on the date these regulations become effective but who are not qualified will continue to qualify in their positions as long as they continuously work as program administrators or site directors. Current program administrators and site directors having a break in employment of more than one (1) year must meet the requirements.

C. TRAINING:

(1) The program administrator will develop and document an orientation and training plan for new staff members and will provide information on training opportunities. New staff members will participate in an orientation before working with children. Initial orientation will include training on the following areas: a) scope of services and activities offered by the program; b) emergency first aid procedures; c)

indicators of child abuse and neglect; d) fire prevention measures and emergency evacuation plan; e) review of licensing regulations; f) review of policies regarding discipline; g) child abuse and neglect reporting; h) handling of incidents and complaints; i) health and safety, including infection and injury prevention and control.

(2) A program will keep a training log on file with the employee's name, date of hire and position. The log must also include the date, hours of training, subject, training source and training certificate.

(3) All care givers will have at least twenty-four (24) hours of training each year. Training must address at least three (3) competency areas within one (1) year and all seven areas within two (2) years. The competency areas are:

- (a) child growth, development, and learning;
- (b) health, safety, nutrition, and infection control;
- (c) family and community collaboration;
- (d) developmentally appropriate content;
- (e) learning environment and curriculum implementation;
- (f) assessment of children and programs; and
- (g) professionalism.

(4) Training must be delivered by people who have education and/or experience in the competency area (or areas) in which they train. Employees or relatives of employees who provide training must have prior approval by the department. See Paragraph (4) of Subsection A of this section for requirements for part-time employees.

(5) Program administrators may count hours in personnel and business training toward the training requirement.

D. STAFFING REQUIREMENTS:

(1) Each site will have a site director.

(2) A program will maintain staff/child ratios at all times. Children must never be left unattended whether inside or outside the facility.

(3) A program will have a minimum of 2 staff members present at all times. If the program has less than 7 children, the 2nd caregiver may be engaged in other duties.

(4) Each site will have one (1) adult for every fifteen (15) children age five (5) or older.

[8.16.2.42 NMAC - Rp, 8.16.2.42 NMAC, 02/14/05; A, 08/31/06]

8.16.2.43 SERVICES AND CARE OF CHILDREN:

A. DISCIPLINE:

(1) A program will have written policies and procedures clearly outlining disciplinary practices. Facilities will give this information to all parents and staff who will sign a form to acknowledge that they have read and understand these policies and procedures.

(2) Discipline will be consistent and age appropriate.

(3) Discipline will include positive guidance, redirection, and clear limits that encourage the child's ability to become self-disciplined.

(4) A program will not use the following disciplinary practices:

(a) physical punishment of any type, including shaking, biting, hitting or putting anything on or over a child's mouth;

(b) withdrawal of food, rest, bathroom access, or outdoor activities;

(c) abusive or profane language, including yelling;

(d) any form of public or private humiliation, including threats of physical punishment; or

(e) unsupervised separation.

B. EQUIPMENT AND PROGRAM:

(1) A program will provide sufficient equipment, materials, and furnishings for both indoor and outdoor activities so that at any one time each child can be individually involved.

(2) Each child at a program will have a designated space for storage of clothing and personal belongings.

(3) A program will store equipment and materials for children's use within easy reach of the children, including those with disabilities. A program will store the equipment and materials in an orderly manner so children can select and replace the materials by themselves or with minimal assistance.

(4) A program will provide children with toys, educational materials, equipment and other materials and activities that are safe, developmentally appropriate, and encourage the child's educational progress, creativity, social interaction, and a balance of individual and group activity. Program staff must be onsite, available and responsive to children during all hours of operation.

(5) A program will post a daily activity schedule. A program will follow a consistent pattern for routine activities such as meals, snacks and rest.

(6) Children will not watch television, video tapes or play video games for more than one (1) hour a day.

(7) Equipment and program requirements apply during all hours of program operation.

C. OUTDOOR PLAY AREAS:

(1) Outdoor play equipment will

be safe and securely anchored.

(2) A program will place sufficient energy absorbing surfaces beneath climbing structures, swings and slides (as determined by Subsection P of 8.16.2.8 NMAC).

D. ENVIRONMENT:

(1) Environment is organized into identifiable learning centers/spaces.

(2) Each center is clearly defined, using shelves and furniture.

(3) Adults can visually supervise all centers at all times.

(4) The capacity of each room will be posted in an area of the room that is readily visible to parents, staff members, and visitors.

E. SWIMMING, WADING AND WATER:

(1) Each child will have written permission from a parent or guardian before the child enters the pool.

(2) If a program has a portable wading pool:

(a) a program will drain and fill the wading pool with fresh water daily and disinfect the pool regularly;

(b) a program will empty a wading pool when it is not in use and remove it from areas accessible to children;

(c) a program will not use a portable wading pool placed on concrete or asphalt.

(3) If a program has a built in or above ground swimming pool, ditch, fishpond or other water hazard:

(a) the fixture will be constructed, maintained and used in accordance with applicable state and local regulations;

(b) the fixture will be constructed and protected so that, when not in use, it is inaccessible to children; and

(c) when in use, children will be constantly supervised and the number of adults present will be proportional to the ages and abilities of the children and type of water hazard in use.

[8.16.2.43 NMAC - Rp, 8.16.2.43 NMAC, 02/14/05; A, 08/31/06]

8.16.2.45 HEALTH AND SAFETY REQUIREMENTS:

A. HYGIENE: Children and staff members will wash their hands with soap and warm running water as needed. Staff and children will wash their hands whenever hands are contaminated with body fluids and always:

(1) after using a toilet;

(2) before and after caring for a sick child;

(3) before any food service activity, including setting the table;

(4) before and after eating; and

(5) after handling pets or animals.

B. FIRST AID REQUIREMENTS:

(1) A program will have on duty at all times one (1) staff member or caregiver currently certified in first aid and cardiopulmonary resuscitation (CPR).

(2) A program will keep a first-aid kit and a first-aid manual together in the program in a location inaccessible to children and easily accessible to adults. The first aid kit will contain, as a minimum, band aids, gauze pads, adhesive tape, scissors, soap, non-porous [latex] gloves, and a thermometer.

(3) A program will treat blood spills cautiously and promptly decontaminate the area. Staff members will wear non-porous, single-use gloves when handling a blood spill, bloody diarrhea, bloody nose, or any other blood. A program will clean contaminated surfaces first with hot soapy water then with a disinfecting solution which is effective against HIV and hepatitis B.

C. MEDICATION:

(1) A program will keep all medications in a locked and identified container inaccessible to children and will refrigerate medications when necessary. If the refrigerator is inaccessible to children, medications do not need to be in a locked container in the refrigerator.

(2) Programs will give medication only with written permission from parents or guardian, to be administered according to written directions from the prescribing physician. In the case of non-prescription medication, written instructions must be provided by the parent or guardian.

(3) A designated staff member will be responsible for giving medication to children. The designated staff member will ensure non-prescription and prescription medications have a label with the child's name and the date the medication was brought to the program. A program will keep non-prescription and prescription medication in the original container with written instructions, including the name of medication, the dosage, and the hours and dates the child should receive the medicine.

(4) The designated staff member will keep a written record of the dosage, date, and time a child is given medication with the signature of the staff who administered the medication. This information will be provided to the parent or guardian who will initial/date acknowledgment of the information received on the day the medication is given.

(5) When the medication is no longer needed, it shall be returned to the parents or guardians or destroyed. The program shall not administer expired medication.

D. ILLNESSES:

(1) Children or staff members absent due to any notifiable disease will not return to the program without a signed state-

ment from a physician.

(2) A program will separate and constantly observe a child who becomes sick at the program and promptly notify a parent or guardian of the child's illness.

(3) A program will send a child home when:

(a) the child's oral temperature is 101 degrees (fahrenheit) or greater or armpit temperature is 100.4 degrees (fahrenheit) or greater and the child shows signs of illness; or

(b) a caregiver observes signs of contagious disease or severe illness.

(4) The program will have a cot or mat available for sick children and it will be cleaned and disinfected thoroughly after use.

[8.16.2.45 NMAC - Rp, 8.16.2.45 NMAC, 02/14/05; A, 08/31/06]

8.16.2.46 OTHER:

A. TRANSPORTATION:

(1) All vehicles used for transportation of children will have an operable fire extinguisher, first-aid kit, first-aid manual, water and blanket.

(2) A program will load and unload children at the curbside of the vehicle or in a protected parking area or driveway. The program will ensure children do not cross a street unsupervised after leaving the vehicle.

(3) No one will smoke in a vehicle used for transporting children.

(4) A program will license all vehicles used for transporting children and will meet all applicable state vehicle laws. Children five years of age through eighteen years of age shall be secured in a child passenger restraint device or by a seat belt.

(5) Vehicles used for transporting children will be enclosed and properly maintained. Vehicles shall be cleaned and inspected inside and out at least weekly.

(6) Vehicles operated by the program to transport children shall be air-conditioned whenever the outside air temperature exceeds 82 degrees fahrenheit. If the outside air temperature falls below 50 degrees fahrenheit the program will ensure the vehicle is heated.

(7) Children may be transported only in vehicles that have current registration and insurance coverage. All drivers must have current driver's license and comply with motor vehicle and traffic laws. Persons who have been convicted in the last seven years of a misdemeanor or felony DWI/DUI cannot transport children under the auspices of a licensed facility/program.

B. FIELD TRIPS:

(1) A program will ensure the children's safety on field trips and excursions. See Subparagraph (f) of Paragraph (1) of Subsection B of 8.16.2.41 NMAC for

requirements concerning field trip permission slips.

(2) Children will not go to a private residence unless accompanied by two (2) adults.

C. PETS:

(1) A program will inform parents or guardians before pets are at the program site.

(2) A program will not allow pets in the kitchen, food serving, food storage areas, or bathrooms.

(3) A program will inoculate any pets as prescribed by a veterinarian and keep a record of proof of inoculation prior to the pet's presence at the program.

(4) A program will not allow on the premises pets or other animals that are undomesticated, dangerous, contagious or vicious.

D. HOUSEKEEPING:

(1) A program will keep the premises, including furniture, fixtures, toys and equipment clean, safe, disinfected, and free of debris and potential hazards.

(2) Materials dangerous to children must be secured in a manner making them inaccessible to children and away from food storage or preparation areas.

(3) All garbage and refuse receptacles will have a tight fitting lid, be durable, and constructed of materials that will not absorb liquids.

E. PEST CONTROL:

(1) All licensed programs must use a New Mexico licensed applicator whenever applying pesticides in or on the program's buildings and grounds.

(2) The applicator may not apply pesticides when children are on the premises.

(3) Parents, guardians, and staff must be notified at least two days prior to spraying or applying pesticides.

(4) All food storage, preparation, and serving areas must be covered and protected from spraying or application of pesticides.

F. MECHANICAL SYSTEMS:

(1) A program will maintain comfortable temperatures (68 degrees fahrenheit through 82 degrees fahrenheit) in all rooms used by children. A program may use portable fans if the fans are secured and inaccessible to children and do not present any tripping, safety or fire hazards. In the event air temperature in a program exceeds the 82 degrees fahrenheit in the summer months because of evaporative cooler temperature limitations, it will be verified that cooling equipment is functioning, is being maintained, and that supplemental aides have been employed, such as, but not limited to: ceiling fans, portable fans, or portable evaporative coolers.

(2) A program must maintain all heating and cooling equipment so that it is in good working order.

(3) A program will not use unvented heaters, open flame heaters or portable heaters. A program will install barriers or take other steps to ensure heating units, are inaccessible to children. Heating units include hot water pipes, hot water baseboard heaters hotter than 110 degrees (fahrenheit), fireplaces, fireplace inserts and wood stoves.

(4) A program will provide fresh air and control odors by either mechanical or natural ventilation. If a program uses a window for ventilation, it will have a screen. If a door is used for ventilation, it must have a screen door.

(5) Water stored in a water heater will be above 124 degrees (fahrenheit) and water coming from a faucet will be below 110 degrees (fahrenheit). A program will install a tempering valve ahead of all domestic water-heater piping.

(6) All food preparation areas, sinks, washrooms, laundries and bathrooms will have hot and cold running water under pressure.

G. LIGHTING, LIGHTING FIXTURES AND ELECTRICAL:

(1) All areas will have sufficient glare-free lighting with shatterproof or shielded bulbs.

(2) A program will have emergency lighting that turns on automatically when electrical service is disrupted.

(3) Use of electrical cords and outlets:

(a) A program will use U/L approved equipment only and will properly maintain this equipment.

(b) The use of multi-prong or gang plugs is prohibited.

H. EXITS AND WINDOWS: When an activity area does not have a door directly to the outside, at least one (1) window in each activity area must be able to be opened for emergency egress with a minimum net clear opening of 5.7 square feet. The minimum net clear opening for height dimension must be twenty-four (24) inches. The minimum net clear opening width dimension must be twenty (20) inches, and the finished sill height must not be more than forty-four (44) inches above the floor.

(1) Activity areas for children must have windows and/or skylight area of at least 1/20th of the floor area.

(2) There must be at least two (2) exits remote from each other on each floor of the program.

(3) Exit ways must be kept free from obstructions at all times.

(4) If a door is used for fresh air ventilation, it must have a screen door.

I. TOILET AND BATHING FACILITIES:

(1) All toilet rooms will have toilet paper, soap and disposable towels at a height accessible to children. A program will not use a common towel or wash cloth.

(2) All closets and bathroom locks must have an outside release. A program will enclose all bathrooms.

(3) Toilets and lavatories must be provided in the following ratios:

(a) one (1) toilet and one (1) lavatory for one (1) to twelve (12) children;

(b) two (2) toilets and two (2) lavatories for thirteen (13) through twenty-five (25) children;

(c) one (1) toilet and one (1) lavatory for each additional fifteen (15) children or fraction thereof;

(d) when a program's capacity exceeds (30) children the program must have a separate toilet room for staff.

J. SAFETY COMPLIANCE:

(1) A program will conduct at least one (1) fire drill each month. A program will:

(a) hold the drills at different times of the day;

(b) use the fire alarm or detector system;

(c) emphasize an orderly evacuation rather than speedy; and

(d) a program will keep on file a record of the fire drills with the date, time, number of adults and children participating, and any problems encountered during the fire drill; records will be kept for one year.

(2) A program shall request an annual fire inspection from the fire authority having jurisdiction. If the policy of the fire authority having jurisdiction does not provide for an annual inspection of the program, the program must document the date the request was made and to whom. A copy of the latest inspection must be posted in the program.

(3) A program will post evacuation plans for each room used by children in the appropriate room.

(4) A program will keep a working telephone in an easily accessible place for calling for help in an emergency and will post emergency phone numbers for fire, police, ambulance and the poison control center next to the phone. A pay phone will not fulfill this requirement.

(5) A program must be equipped with smoke detectors approved in writing by the fire authority having jurisdiction as to number, type, and placement.

(6) A program must have a minimum of two (2) 2A10BC fire extinguishers, one (1) located in the kitchen or food preparation area, and one (1) centrally located in the center.

(7) Fire extinguishers, alarm sys-

tems, automatic detection equipment, and other fire fighting must be properly maintained and inspected on a least yearly basis; fire extinguishers must be tagged noting the date of inspection; see Paragraph (2) of Subsection E of 8.16.2.28 NMAC for emergency lighting requirements.

K. S M O K I N G , FIREARMS, ALCOHOLIC BEVERAGES, ILLEGAL DRUGS AND CONTROLLED SUBSTANCES: A program will prohibit smoking in all areas, including vehicles, and will not allow any alcoholic beverages, firearms or non-prescription controlled substances (drugs) on the premises or in vehicles. Possessing or knowingly permitting illegal drugs or non-prescription controlled substances to be possessed or sold on the premises at any time regardless of whether children are present is prohibited.

L. ACCREDITED PROGRAMS: Accredited programs must meet and maintain all licensing standards and their CYFD-approved national accreditation without a lapse in order to continue to receive augmented child care reimbursement rates. The licensing authority may, at its option, notify the program's accrediting body of the program's failure to meet and maintain licensing standards.

[8.16.2.46 NMAC - Rp, 8.16.2.46 NMAC, 02/14/05; A, 08/31/06]

NEW MEXICO CRIME VICTIMS REPARATION COMMISSION

This is an amendment to 10.40.2 NMAC, Sections 5, 8, 9, 10, 11, and 12, effective August 31, 2006.

This rule has been reformatted and renumbered to comply with current NMAC requirements.

10.40.2.5 EFFECTIVE DATE: March 14, 1998, unless a ~~[different] later~~ date is cited at the end of a section ~~[or paragraph]~~.

[4/30/97, 3/14/98; 10.40.2.5 NMAC - Rn & A, 10 NMAC 40.2.5, 08/31/06]

10.40.2.8 APPLICATIONS FOR REPARATION:

A. Applications shall be filed on forms provided by the commission.

B. Application for reparation must be made to the crime victims reparation commission within two years of the date of the incident giving rise to the application. Filing of the application provided by the commission shall be considered received when the application is post-marked delivered or faxed within the two year time limit to the commission's offices. However, upon approval by the director, the director may find, in his discretion, that the application was received upon oral contact

with the commission, or its employees, within two years of the date of the incident.

C. Application for reparation must be made directly to employees of the commission. Only the commission's employees are authorized to accept applications.

D. In no event shall reparation be given unless application has been made within two years after the injury or death except for minors as described in Subsection A of 10.40.2.9 NMAC of these regulations.

E. The word "eligible", as stated in Section 31-22-3 H (2) NMSA 1978, includes Victims of Crime Act eligible programs.

F. [RESERVED]

G. After receipt of the application, the commission's staff may request additional information or documentation. If the victim/claimant fails to respond to any request of the commission's staff for additional documents or information, the victim's application ~~[shall]~~ may be presented to the commission board for denial.

[1/20/89, 11/7/91; 3/14/98; 10.40.2.8 NMAC - Rn & A, 10 NMAC 40.2.8, 08/31/06]

10.40.2.9 DATE OF INCIDENT:

A. For all purposes of administering applications, the date of the injury or death shall be the date of incident. The only exception to this is when the victim is a minor and the application is for an alleged violation of Section 30-6-1 NMSA 1978, Abandonment or Abuse of a Child, Section 30-9-11 NMSA 1978, Criminal Sexual Penetration or Section 30-9-13 NMSA 1978, Criminal Sexual Contact of a Minor when the injury or death was reported to law enforcement after July 1, 1991. The date of incident for these violations shall be the first day the victim attains the age of eighteen or the date the violation is reported to a law enforcement agency, whichever occurs first. The victim must report the crime to a law enforcement agency within thirty days of attaining the age of eighteen. However, in cases of domestic violence or sexual assault, the victim must report to law enforcement within 180 days of occurrence of the crime or in the case of a victim who is a minor of criminal sexual penetration or criminal sexual contact of a minor, the victim must report to law enforcement within 180 days of their eighteenth birthday.

B. Effective date of statute: The effective date of statute changes shall be that which is prescribed by the constitution of the state of New Mexico.

C. The date of incident as stated in Subsection A of 10.40.2.9 NMAC

of these regulations shall determine which statutes govern administering and payment of the application. No changes in statute shall affect an application unless the date of incident occurs on or after the effective date of the statute.

[11/7/91, 3/14/98; 10.40.2.9 NMAC - Rn & A, 10 NMAC 40.2.9, 08/31/06]

10.40.2.10 LIMITATIONS:

A. If expenses incurred by any victim/claimant exceed the maximum amount allowed by statute on the date of incident, the commission board shall decide the most appropriate method of distribution of reparations awarded, pursuant to the following guidelines.

B. A victims/claimant may shall be compensated in full, to the greatest extent possible, for debts for which they have expended personal funds, and reasonable compensation for lost wages unless requested otherwise by the victim/claimant. Unpaid service providers may receive a pro-rata distribution of any funds remaining after victims/claimant have been compensated in full for personal expenditures. The commission board may in its sole discretion determine that fair reparation has been paid to any service provider.

C. All victims/claimants ~~must~~ should provide all necessary documentation to commission staff for the verification of all reimbursable expenses. This documentation must provide the name of payee, the name of payer, the amount paid, date of services, and indicate what service was provided. This documentation may include invoices, receipts and canceled checks. Affidavits and letters shall not be considered proper documentation.

~~D. Sick leave shall be used as a collateral source only to offset applications for compensation for lost wages.~~

~~E. D.~~ Restitution and civil judgments may be considered a collateral source only when there is verification of payment by the offender or responsible party.

~~F. E.~~ The commission may award reparation for funeral related expenses occasioned by an act or omission which includes a crime enumerated in Section 31-22-8 A NMSA 1978. Awards for funeral expenses shall not exceed ~~three thousand five hundred dollars (\$3,500.00)~~ six thousand dollars (\$6,000.00). Items not to be included for reimbursement are: food, clothing, items of value such as jewelry, saddles, etc. At the board's discretion, a restricted item may be waived.

~~G. E.~~ The commission may award reparation for the loss of eyeglasses or contact lenses damaged as a result of an act or omission which includes a crime enumerated in Section 31-22-8 A NMSA 1978.

Awards for eyeglasses or contact lenses shall not exceed three hundred fifty dollars (\$350.00).

~~H. G.~~ Loss of wages shall not be paid pursuant to this section unless the individual requesting loss of wages is employed at the time of the incident. A victim may be paid loss of wages for the time he/she is unable to work due to his/her injuries as certified by a licensed physician, psychologist, psychiatrist, dentist, master level therapist, nurse practitioner or physician's assistant. A victim or if the victim is a minor, loss of wages may be paid to a victim, parent, guardian, etc., who must take time off from their employment to transport himself or the victim to a physician, dentist, counselor or therapist or for investigative interviews and criminal justice proceedings. Loss of wages may be paid to the victim, claimant, and/or, in the case of a minor victim, guardian, for up to ~~ten days~~ fourteen calendar days after the crime for a recovery period. Also, in the case of a deceased victim, ~~ten days~~ up to fourteen calendar days will be allowed for the individual responsible for making funeral arrangements. No certification from a physician will be required for this period of time. Relatives, as defined in Section 31-22-3 G, of a homicide victim are eligible for loss of wages for a recovery period of ~~ten days~~ up to fourteen calendar days following the date of incident. An individual who assumes the duties of providing home health care to the victim, when this care is required by physician order, may be considered for loss of wages. In all instances of payment of loss of wages, Paragraph (1) of Subsection ~~H. G.~~ of 10.40.2.10 NMAC of these regulations must be followed. The board may consider special circumstances when payment of loss of wages will be in the best interest of the victim and/or claimant. Loss of wages may also be considered for the parent or guardian or caregiver of a minor if the board determines that it is in the best interest of the victim. ~~[No award shall be allowed for use of accumulated sick leave during the disability period.]~~ If loss of wages are claimed, the following must be submitted for verification.

(1) Except as indicated above, a copy of a doctor's statement certifying that the victim is unable to work; or a doctor's statement included in a medical document, or medical documentation showing the inability of the victim to work. Hospitalization shall constitute grounds for paying loss of wages.

~~(2) One of the following verifications must be provided:~~

~~(a)~~ (2) a statement from the employer providing:

~~(b)~~ (a) the dates of work missed due to the incident;

~~(c)~~ (b) hourly wage;

~~(d)~~ (c) the average number of hours worked weekly; and

~~(e)~~ (d) any type of compensation received, such as sick leave, annual leave, unemployment, etc.; or

~~(f)~~ (3) if self-employed, or in the opinion of the commission staff, additional verification is required, the individual requesting loss of wages ~~must~~ may sign a request for federal income tax account information to be sent directly to the agency; this request form will be provided by the crime victims reparation commission.

~~H. H.~~ When any award of reparation is made by the commission, and said award is less than the maximum amount allowed by statute on the date of incident, the director may award additional reparation. Any additional reparation so awarded shall stem from the offense for which the original award was given. The commission board shall be informed of any additional reparation granted pursuant to this subsection at the next regular meeting.

~~I. I.~~ Any victim/claimant that incurs expenses that are covered by a collateral source(s) as defined in Section 31-22-3 B NMSA 1978 including but not limited to automobile insurance, home owners/rental insurance, health insurance, indigent funds, medicaid, medicare or veterans administration shall submit covered expenses to the source(s) for payment. Only those expenses not covered by the collateral source(s) will be considered for reparation.

~~K. J.~~ Mental health counseling and care means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is actually and reasonably incurred as a result of the victim's injury or death. Evaluation and counseling shall be performed by a provider licensed in accordance with the New Mexico Counseling and Therapy Practice Act or licensed to practice in the state where treatment is being provided. Those providers awaiting licensure approval must be under the direct supervision of a licensed professional. This requirement may be waived at the discretion of the commission board. If it is apparent that treatment is addressing issues not related to the crime, the commission may pay for only that percentage of treatment which is addressing the victimization.

(1) All counselors shall provide the commission staff with the following:

(a) detailed patient evaluation describing the effect of the victimization;

(b) presentation of complaints: functional impairment, i.e., employment, school, interpersonal relationships, emotional/behavioral, etc.;

(c) pre-existing conditions: a

diagnosis of any pre-existing conditions and their potential effect on the condition resulting from the incident;

(d) treatment goal (PLAN): describe in measurable behavioral terms the goals of treatment as they relate to the functional impairment of the victim; that is, describe the specific behavioral, emotional, and/or interpersonal changes to be achieved as the criteria for termination of treatment; note: treatment plans must be fully documented in a "problem" and "intervention" type of format; detail must be provided for both symptoms and intervention; ~~[Single word descriptors such as "nightmares" or supportive "counseling" will not suffice. These insufficient treatment plans will be returned and the case deferred until revised. Periodic review will be requested for any unusual activity or charges.]~~ incomplete treatment plans may delay review and payment until additional and/or correct information is received;

(e) method of accomplishing treatment goals: for each treatment goal, please explain the therapeutic approach(es) you anticipate using;

(f) medication prescribed and reason;

(g) treatment sessions: estimated length of treatment, (number, frequency and duration of treatment sessions to achieve treatment goals;

(h) explanation of what percentage of treatment is related to the victimization;

(i) itemized statement for services (including a copy of your agency's sliding fee scale evaluation);

(j) state license number;

(k) the commission may waive any of the above in the interest of the victim.

(2) When the victim is a minor, a therapist shall be prohibited from receiving reparation if entering into a dual relationship whereby they are providing treatment to the minor victim as well as to the offender.

(3) Inpatient hospitalization may ~~[only]~~ be considered in life-threatening situations when the treatment has been recommended, in writing, by the victim's physician or mental health provider.

(4) The commission shall not consider payment to health providers for the following: missed appointments, report writing, telephone consultation, court appearance, therapist travel time costs, interest charged, telephone calls to the crime victims reparation commission office, or sessions which include the offender.

(5) At any time during treatment, the commission may require a follow-up report or prognosis notes from the provider detailing the results of the treatment and stating any need for additional therapy. The

commission shall ~~[only approve for payment up to thirty total sessions per application submitted]~~ approve up to thirty sessions per person deemed eligible under the application submitted unless approval for additional therapy has been granted by the commission. The provider shall furnish the commission with a detailed report stating that continuing treatment is necessary due to problems created as a direct result of the victimization. The commission may at any time request an independent evaluation.

~~[L.]~~ K. The commission may consider payment of Native American medicine man treatment fees.

(1) Since a reasonable and customary schedule of charges has not been established, the commission may require that the following be submitted:

(a) a written description of each procedure, function, and/or activity performed and its benefit to the victim;

(b) a written description of charges and dates for each procedure, function, and/or activity;

(c) the location that each procedure, function, and/or activity was performed;

(d) the time involved to perform such services;

(e) a summary outlining the qualifications and experiences which allows the service provider to perform the services of a medicine man;

(f) a detailed list of materials used in the ceremonies and an explanation as to the use of those materials.

(2) In all cases of medicine man care, the commission board shall only approve up to \$3,000.00 per application unless prior approval has been granted by the commission board for additional treatment.

~~[M.]~~ L. The provisions of Section 31-22-10 A NMSA, 1978, prohibit reparation if the victim is a member of the offender's family relationship group where payment would unjustly enrich the offender. Unjust enrichment shall be when the offender benefits from payments by either personally receiving compensation or by having compensation reduce the offender's financial obligation of medical payment, funeral expense, or other expenses incurred as a result of the crime. Payments to victims which benefits offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. The victim and/or claimant must cooperate with law enforcement in the prosecution of the offender.

~~[N.]~~ M. Gas expenses to transport the victim to a health provider may be considered if the travel is over thirty miles one way from the victim's residence. This travel shall be verified by the health provider's billing and reports for the travel

requested. The gas will be reimbursed at the rate of ~~[ten cents]~~ twenty cents per mile.

~~[O.]~~ N. Gas expenses to transport the victim to a law enforcement agency for the purpose of official business relating to the incident for which the application is filed may be considered. The distance traveled shall be more than thirty miles one way from the victim's residence and the gas will be reimbursed at the rate of ~~[ten cents]~~ twenty cents per mile.

~~[P.]~~ O. The commission board may consider travel expenses related to the identification of the deceased victim by an individual who has assumed responsibility for making arrangements for the deceased.

~~[Q.]~~ P. The following expenses shall not be considered for reimbursement:

- (1) phone bills;
- (2) copying fees;
- (3) postage costs.

~~[R.]~~ Q. ~~[The commission board may consider gas expenses, at the reimbursement of ten cents per mile, or airfare for the victim or responsible party who because of the severity of his injuries is transported to a medical facility. Lodging and meal expenses, at the reimbursement rate consistent with DFA rules in effect at the time of travel, may be considered. One car rental may also be considered for the responsible party. These expenses shall only be considered while the victim is at a medical facility and the distance must be more than fifty miles from the victim's residence.]~~ If a victim is transported to a medical facility due to the severity of the victim's injuries, gas expenses may be considered for reimbursement at the rate of twenty cents per mile for relatives, a member of the victim's family relationship group, or a dependent of the victim. Lodging and meal expenses for these individuals may also be considered at the reimbursement rate consistent with DFA rules in effect at the time of the travel. A car rental at a reasonable rate may also be considered for reimbursement. These expenses shall only be considered while the victim is at a medical facility and the distance must be more than fifty miles one way from the victim's residence. [11/7/91, 3/14/98; 10.40.2.10 NMAC - Rn & A, 10 NMAC 40.2.10, 08/31/06]

10.40.2.11 REDUCTIONS AND DENIALS:

A. The commission board shall consider that the purpose of the New Mexico Crime Victims Reparation Act, as stated in Section 31-22-2 NMSA 1978, is to promote cooperation with law enforcement efforts and promote the public health, welfare, and safety of the citizens of New Mexico. In accordance with Section 31-22-7 C NMSA 1978, the commission board in determining whether to make an award may consider any circumstances it determines to

be relevant.

(1) Also, as required by the statute, the commission board shall consider the behavior of the victim. This shall be applied equally and consistently to all persons. In considering the behavior of the victim, the commission board may reduce or deny an application under any relevant circumstances, including, but not limited to the following:

(a) knowing or willing involvement in the commission of a crime as defined in Section 30-1-4 NMSA 1978 at the time of incident;

(b) behavior constituting provocation or incitement;

(c) illegal drug use;

(d) gang-related crime or activity;

(e) knowingly or willingly riding in a vehicle operated by a person who is under the influence of alcohol or a controlled substance;

(f) operating a vehicle while legally intoxicated;

(g) failure to wear a seat belt as required by statute;

(h) victim/claimant knowingly falsifying application;

~~(i) no automobile insurance as required by statute;~~

~~(+)~~ (i) intoxication where the judgment of a person would be impaired; or
~~(+)~~ (j) knowingly engaging in a physical altercation.

(2) In cases where the victim is under eighteen years of age or the victim is mentally or physically incapable of adhering to these requirements, the commission board may waive the above. In addition, the board may waive any of the above in the case of intimidation.

B. In accordance with the Crime Victims Reparation Act, Section 31-22-7 D (3) NMSA 1978, the commission, upon finding that a claimant or victim has not cooperated with law enforcement agencies or with investigators, agents, or representatives of the commission, may deny reparation.

(1) The claimant or victim may be considered uncooperative based on, but not limited to, the following acts:

(a) refusal to discuss the crime with the investigating police agencies;

(b) refusal to respond to questions posed by the investigating police agency regarding the crime on which the application is based;

(c) withholding or secreting information from the agency investigating the crime regarding the description, the identity, or the whereabouts of the offender; or refusal to act as a witness before a court with respect to the crime on which the application is based;

(d) refusal to prosecute the

alleged ~~offender~~ suspect or pursue charges against the ~~offender~~ suspect of the crime on which the application is based;

(e) refusal or neglect to provide the information required by the commission to determine the validity of an application;

(f) impeding the progress of a criminal investigation of the crime on which the application is based; or

(g) advising other persons to refuse to cooperate with law enforcement agencies or with the commission in the conduct of their investigations.

(2) In cases where the victim is under eighteen years of age or the victim is mentally or physically incapable of adhering to these requirements, the commission board may waive the above.

C. Any application that has been denied by the commission may be reopened at the discretion of the commission.

[11/7/91, 3/14/98; 10.40.2.11 NMAC - Rn & A, 10 NMAC 40.2.11, 08/31/06]

10.40.2.12 APPEAL PROCEDURE: If a victim/claimant feels that the commission board's decision on their application is incorrect, they may file an appeal with the agency. The appeal procedure is as follows:

A. The victim/claimant shall write a letter to the director requesting the director to review the commission board's decision. Any new or additional relevant information should be provided at this time. The director shall review the application file and additional information submitted and make a determination as to whether or not reconsideration of the original decision by the commission board is warranted. If the director feels the commission board should reconsider, the director shall present the application to the commission board and request a review of the decision. If the director concurs with the commission board, the director shall notify the victim/claimant of the decision.

B. The victim/claimant may request in writing a meeting between the victim/claimant and the director, staff ~~investigator~~ to whom the application is assigned, and an independent victim advocate to discuss the issues. The director, staff ~~investigator~~ to whom the application is assigned, and advocate shall then make a recommendation to the commission board.

C. If the victim/claimant disagrees with the results of steps one and two of the appeal procedure, then he/she may request in writing an appearance before the commission board. The director shall schedule the appearance before the commission board for the appeal. The victim/claimant may present any information he/she thinks is relevant. The commis-

sion board shall review the information presented and make a determination on the application. The decision of the commission board is final.

[11/7/91; 11/7/97; 3/14/98; 10.40.2.12 NMAC - Rn & A, 10 NMAC 40.2.12, 08/31/06]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.3 NMAC, the addition of text in Section 9 effective on 9/6/06.

20.2.3.9 LIMITATION OF APPLICABILITY TO 20.2.70 NMAC.

The requirements of this part are not applicable requirements under 20.2.70 NMAC, as defined by that part. This section does not limit the applicability of this part to sources required to obtain a permit under 20.2.72 NMAC, nor does it limit which terms and conditions of permits issued pursuant to 20.2.72 NMAC are applicable requirements for permits issued pursuant to 20.2.70 NMAC.

[20.2.3.9 NMAC - N, 9/6/06]

~~[20.2.3.9]~~ **20.2.3.10 to 20.2.3.107**
[RESERVED]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.70 NMAC, Sections 5, 7, 201, 300, 302 and 304 effective on 9/6/06.

20.2.70.5 EFFECTIVE DATE: 11/30/95, except where a later date is cited at the end of a section.

[11/30/95; 20.2.70.5 NMAC - Rn, 20 NMAC 20.2.70.I.104, 06/14/02; A, 9/6/06]
[The latest effective date of any section in this Part is 9/6/06.]

20.2.70.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part~~±~~ the following definitions shall apply.

A. "Acid rain source" has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV of the federal act.

B. "Affected programs" means all states, local air pollution control programs, and Indian tribes and pueblos, that are within 50 miles of the source.

C. "Air pollutant" means an air pollution agent or combination of

such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N₂), carbon dioxide (CO₂), oxygen (O₂), methane and ethane.

D. "Air pollution control equipment" means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

E. "Applicable requirement" means all of the following, as they apply to a Part 70 source or to an emissions ~~units~~ unit at a Part 70 source (including requirements that have been promulgated or approved by the board or US EPA through rulemaking at the time of permit issuance but have future-effective compliance dates)[§].

(1) Any standard or other requirement provided for in the New Mexico state implementation plan approved by US EPA, or promulgated by US EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52[§].

(2) Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent[§].

(3) Any standard or other requirement under Section 111 of the federal act, including Section 111(d)[§].

(4) Any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act[§].

(5) Any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder[§].

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act[§].

(7) Any standard or other requirement governing solid waste incineration

under Section 129 of the federal act[§].

(8) Any standard or other requirement for consumer and commercial products under Section 183(e) of the federal act[§].

(9) Any standard or other requirement for tank vessels under Section 183(f) of the federal act[§].

(10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit[§].

(11) Any national ambient air quality standard[§].

(12) Any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act[§].

(13) Any regulation adopted by the board pursuant to the New Mexico Air Quality Control Act, Section 74-2-5(B) NMSA 1978.

F. "CFR" means the Code of Federal Regulations.

G. "Draft permit" means a version of a permit which the department offers for public participation or affected program review.

H. "Emission limitation" means a requirement established by US EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

I. "Emissions allowable under the permit" means:

(1) any state or federally enforceable permit term or condition that establishes an emission limit (including a work practice standard) requested by the applicant and approved by the department or determined at issuance or renewal to be required by an applicable requirement; or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

J. "Emissions unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

K. "Federally enforceable" means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61,

requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

L. "Final permit" means the version of an operating permit issued by the department that has met all review requirements of 20.2.70.400 NMAC - 20.2.70.499 NMAC.

M. "Fugitive emissions" are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

N. "General permit" means an operating permit that meets the requirements of 20.2.70.303 NMAC.

O. "Hazardous air pollutant" means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

P. "Insignificant activities" means those activities which have been listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

Q. "Major source" means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2) or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as the following[§].

(a) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the federal act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such lesser quantity as the administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such

units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to one of the following categories of stationary sources:

- (a) coal cleaning plants (with thermal dryers);
 - (b) kraft pulp mills;
 - (c) portland cement plants;
 - (d) primary zinc smelters;
 - (e) iron and steel mills;
 - (f) primary aluminum ore reduction plants;
 - (g) primary copper smelters;
 - (h) municipal incinerators capable of charging more than 250 tons of refuse per day;
 - (i) hydrofluoric, sulfuric, or nitric acid plants;
 - (j) petroleum refineries;
 - (k) lime plants;
 - (l) phosphate rock processing plants;
 - (m) coke oven batteries;
 - (n) sulfur recovery plants;
 - (o) carbon black plants (furnace process);
 - (p) primary lead smelters;
 - (q) fuel conversion plant;
 - (r) sintering plants;
 - (s) secondary metal production plants;
 - (t) chemical process plants;
 - (u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - (v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - (w) taconite ore processing plants;
 - (x) glass fiber processing plants;
 - (y) charcoal production plants;
 - (z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
 - (aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal act.
- (3) A major stationary source as defined in Part D of Title I of the federal act, including:
- (a) for ozone non-attainment

areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the federal act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) for carbon monoxide non-attainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) for particulate matter (PM10) non-attainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

R. "Operating permit" or "permit" (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to this part.

S. "Operator" means the person or persons responsible for the overall operation of a facility.

T. "Owner" means the person or persons who own a facility or part of a facility.

U. "Part" means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

V. "Part 70 source" means any source subject to the permitting requirements of this part, as provided in 20.2.70.200 NMAC - 20.2.70.299 NMAC.

W. "Permit modification" means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in 20.2.70.404 NMAC.

X. "Permittee" means the owner, operator or responsible official at a permitted Part 70 source, as identified in any permit application or modification.

Y. "Portable source" means any plant that is mounted on any

chassis or skids and which can be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock, that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit. Portable sources may include sand and gravel plants, rock crushers, asphalt plants and concrete batch plants which meet this criteria.

Z. "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AA. "Proposed permit" means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with 20.2.70.402 NMAC.

AB. "Regulated air pollutant" means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act; or

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including Sections 112(g), (j), and (r), including the following:

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with

respect to the individual source subject to a Section 112(g)(2) requirement.

AC. "Renewal" means the process by which a permit is reissued at the end of its term.

AD. "Responsible official" means one of the following.

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars), or b) the delegation of authority to such representative is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of US EPA).

(4) For an acid rain source: the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

AE. "Section 502(b)(10) changes" are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

AF. "Shutdown" means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

AG. "Solid waste incineration unit" means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term "solid waste incineration unit" does not include:

(1) incinerators or other units required to have a permit under Section

3005 of the federal Solid Waste Disposal Act;

(2) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(3) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(4) air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by the administrator by rule.

AH. "Startup" means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

AI. "Stationary source" or "source" means any building, structure, facility, or installation, or any combination thereof that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

AJ. "Subsidiary" means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

AK. "Temporary source" means any plant that is situated in one location for a period of less than one year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, which means that it does not have to meet the requirements of a portable source. Temporary sources may include well head compressors which meet this criteria.

AL. "Title I modification" means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the federal act.

[11/30/95; 20.2.70.7 NMAC - Rn, 20 NMAC 2.70.I.107, 06/14/02; A, 11/07/02; A, 9/6/06]

20.2.70.201 REQUIREMENT FOR A PERMIT:

A. A Part 70 source may

operate after the time that it is required to submit a timely and complete application under this part only if:

(1) the source is in compliance with an operating permit issued by the department or EPA; or

(2) a timely permit (including permit renewal) application has been submitted consistent with 20.2.70.300 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application.

B. Revocation or termination of a permit by the department terminates the permittee's right to operate.

C. The submittal of a complete operating permit application shall not protect any source from any applicable requirement, including any requirement that the source have a preconstruction permit under Title I of the federal act or state regulations.

D. Requirement for permit under 20.2.72 NMAC.

(1) Part 70 sources that have an operating permit and do not have a permit issued under 20.2.72 NMAC or 20.2.74 NMAC shall submit a complete application for a permit under 20.2.72 NMAC within 180 days of September 6, 2006. The department shall consider and may grant reasonable requests for extension of this deadline on a case-by-case basis.

(2) Part 70 sources that do not have an operating permit or a permit under 20.2.72 NMAC upon the effective date of this subsection shall submit an application for a permit under 20.2.72 NMAC within 60 days after submittal of an application for an operating permit.

(3) Paragraphs 1 and 2 of this subsection shall not apply to sources that have demonstrated compliance with both the national and state ambient air quality standards through dispersion modeling or other method approved by the department and that have requested incorporation of conditions in their operating permit to ensure compliance with these standards.

[11/30/95; 20.2.70.201 NMAC - Rn, 20 NMAC 2.70.II.201, 06/14/02; A, 9/6/06]

20.2.70.300 PERMIT APPLICATIONS:

A. Duty to apply[?]. For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this part.

B. Timely application. A timely application for a source applying for a permit under this part is:

(1) for first time applications, one that is submitted within twelve (12) months after the source commences operation as a

Part 70 source, or as established in the transition schedule outlined in Paragraph (4) of Subsection B of 20.2.70.300 NMAC;

(2) for purposes of permit renewal, one that is submitted at least twelve (12) months prior to the date of permit expiration[?];

(3) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides[?];

~~(4) Transition schedule. A timely application for a Part 70 source which is in operation on or before December 19, 1995 is one that is submitted:~~

~~(a) For sources, except natural gas processing plants, which have been issued a permit, including a permit modification, pursuant to 20.2.72 NMAC, 20.2.74 NMAC, or 20.2.79 NMAC on or after January 1, 1987, by February 2, 1995, except that persons owning more than one source in this category may submit applications for half of their sources by February 2, 1995 and submit the remaining applications by March 19, 1995;~~

~~(b) For sources, except natural gas processing plants, which were issued a permit, including a permit modification, pursuant to 20.2.72 NMAC, 20.2.74 NMAC, or 20.2.79 NMAC prior to January 1, 1987, by June 19, 1995;~~

~~(c) For all other sources, by December 19, 1995.]~~

C. Completeness of [A]application[?].

(1) To be deemed complete, an application must provide all information required pursuant to Subsection D of 20.2.70.300 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(2) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(4) The applicant's ability to operate without a permit, as set forth in Paragraph (2) of Subsection A of 20.2.70.201 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

D. Content of application[?]. Any person seeking a permit under this part shall do so by filing a written application with the department. The applicant shall submit three (3) copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.2.71 NMAC (operating permit emission fees). Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall[?] meet the following requirements.

(1) Be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act[?].

(2) State the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittees subject to this part, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations[?].

(3) State the date of the application[?].

(4) Include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source. The location shall be identified by latitude and longitude or by UTM coordinates[?].

(5) For all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, pro-

vide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in 20.2.70.7 NMAC). This shall include:

(a) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(b) identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(c) emissions rates in tons per year, pounds per hour and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(d) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(e) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(f) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(g) [A]if requested by the department, an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(h) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(i) for each alternative operating scenario identified by the applicant, all of the information required in Subparagraphs (a) through (h) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios[?].

(6) Provide a list of insignificant activities (as defined in 20.2.70.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements[?].

(7) Provide a citation and description of all applicable air pollution control requirements, including:

(a) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(b) a description of or reference to any applicable test method for determining compliance with each applicable require-

ment[?].

(8) Provide an explanation of any proposed exemptions from otherwise applicable requirements[?].

(9) Provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any permit fees owed under 20.2.71 NMAC (operating permit emission fees)[?].

~~[(10) For applications which are required under the transition schedule in paragraph (4) of subsection B of 20.2.70.300 NMAC, include a dispersion modeling analysis, using US EPA approved models and procedures, showing whether emissions from the source would cause air pollutant concentrations in excess of any national ambient air quality standard. Air pollutants which are not emitted in significant (as defined in 40 CFR 52.21(b)(23)(i)) amounts during routine operations need not be modeled.~~

~~(a) This requirement shall not apply to the following:~~

~~(i) A Part 70 source issued a permit under 20.2.72 NMAC, 20.2.74 NMAC, 20.2.79 NMAC after January 1, 1986; or~~

~~(ii) A Part 70 source subject to 20.2.14 NMAC, 20.2.16 NMAC, 20.2.19 NMAC, 20.2.31 NMAC, 20.2.32 NMAC if no physical or operational modifications that have resulted in increased particulate matter, sulfur dioxide, or nitrogen oxide emissions have occurred since the time modeling was performed for that facility as part of revisions to those regulations.~~

~~(b) The Department may waive modeling with respect to ozone if the Department determines that emissions from the source are not likely to cause ozone concentrations in excess of the national ambient air quality standard.]~~

~~[(11)](10) Provide certification of compliance, including[?] all of the following.~~

(a) A certification, by a responsible official consistent with Subsection E of 20.2.70.300 NMAC, of the source's compliance status for each applicable requirement. For national ambient air quality standards, certifications shall be based on the following.

(i) For first time applications, this certification shall be based on modeling submitted with the application for a permit under 20.2.72 NMAC.

(ii) For permit renewal applications, this certification shall be based on compliance with the relevant terms and conditions of the current operating permit.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping,

and reporting requirements and test methods[?].

(c) A statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term[?].

(d) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department [and].

(e) A statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act.

~~[(12)](11) For sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains: all of the following.~~

(a) A description of the compliance status of the source with respect to all applicable requirements[?].

(b) A narrative description of how the source will achieve compliance with such requirements for which it is not in compliance[?].

(c) A schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements. The schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance. Any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based[?].

(d) A schedule for submission of certified progress reports no less frequently than every six (6) months[and].

(e) For the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

E. Certification[?]. Any document, including any application form, report, or compliance certification, submitted pursuant to this part shall contain certification by a responsible official of truth, accuracy, and completeness. This certifica-

tion and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[11/30/95; A, 11/14/98; 20.2.70.300 NMAC - Rn, 20 NMAC 2.70.III.300, 06/14/02; A, 9/6/06]

20.2.70.302 PERMIT CONTENT:

A. Permit conditions[?].

(1) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(a) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(b) for any non-major source subject to 20.2.70.200 NMAC - 20.2.70.299 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to this part;

(c) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(d) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;

(e) include a provision to ensure that the permittee pays fees to the [D]department consistent with the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); and

(f) for purposes of the permit shield, identify any requirement specifically identified in the permit application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(2) Each permit issued shall, additionally, include provisions stating ~~that~~ the following.

(a) The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance is grounds for enforcement action. In addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act[?].

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit[?].

(c) The permit may be modified, reopened and revised, revoked and reissued,

or terminated for cause in accordance with 20.2.70.405 NMAC[?].

(d) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition[?].

(e) The permit does not convey any property rights of any sort, or any exclusive privilege[?].

(f) Within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(3) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(a) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(b) shall, for each such alternative scenario, meet all applicable requirements and the requirements of this part.

(4) The department may impose conditions regulating emissions during startup and shutdown.

(5) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(6) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the Board, and any other applicable law or regulation.

(7) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless

the source is major for that pollutant.

(8) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(9) The acid rain portion of operating permits for acid rain sources shall additionally:

(a) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator[?]; and

(b) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this part shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

B. Permit duration[?]. The department shall issue operating permits for a fixed term of five (5) years.

C. Monitoring[?].

(1) Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(2) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Subsection E of 20.2.70.302 NMAC. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(3) The permit shall also contain

specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

D. Recordkeeping[?].

(1) The permit shall require recordkeeping sufficient to assure and verify compliance with the terms and conditions of the permit, including recordkeeping of:

(a) the date, place as defined in the permit, and time of sampling or measurements;

(b) the date(s) analyses were performed;

(c) the company or entity that performed the analyses;

(d) the analytical techniques or methods used;

(e) the results of such analyses; and

(f) the operating conditions existing at the time of sampling or measurement.

(2) Records of all monitoring data and support information shall be retained for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

E. Reporting[?]. The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including[?] all of the following.

(1) Submittal of reports of any required monitoring at least every six (6) months. The reports shall be due to the department within forty-five (45) days of the end of the permittee's reporting period. All instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Subsection E of 20.2.70.300 NMAC[?].

(2) Prompt reporting of all deviations (including emergencies) from permit requirements, including the date, time, duration and probable cause of such deviations, the quantity and pollutant type of excess emissions resulting from the deviation, and any corrective actions or preventive measures taken. Such reports shall include telephone, verbal or facsimile communication within twenty-four (24) hours of the start of the next business day and written notification within ten (10) days[?].

(3) Submittal of compliance certification reports at least every twelve (12) months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with all permit terms and conditions contained in the per-

~~mit [and all applicable requirements relevant to the source], including [those related to] emission limitations, standards, or work practices.~~ The reports shall be due to the department within thirty (30) days of the end of the permittee's reporting period. Such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

(a) the identification of each term or condition of the permit that is the basis of the certification;

(b) the compliance status of the source;

(c) whether compliance was continuous or intermittent;

(d) the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and

(e) such other facts as the department may require to determine the compliance status of the source~~[-and]~~.

(4) Such additional provisions as may be specified by the administrator to determine the compliance status of the source.

F. Portable and Temporary Sources~~[-]~~. The department may issue permits for portable and temporary sources which allow such sources to relocate without undergoing a permit modification. Such permits shall not apply to acid rain sources and shall include conditions to assure that:

(1) ~~[F]~~the source is installed at all locations in a manner conforming with the permit;

(2) ~~[F]~~the source shall comply with all applicable requirements and all other provisions of this part at all authorized locations;

(3) the owner or operator shall notify the department in writing at least fifteen (15) calendar days in advance of each change in location;

(4) notification shall include a legal description of where the source is to be relocated and how long it will be located there; and

(5) emissions from the source shall not, at any location, result in or contribute to an exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal act; the department may require dispersion modeling to assure compliance at any location.

G. Compliance~~[-]~~. To assure and verify compliance with the terms and conditions of the permit and with this part, permits shall also~~[-]~~ include all the following.

(1) Require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the

department to perform the following:

(a) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(b) have access to and copy any records that must be kept under the conditions of the permit;

(c) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act.

(2) Require that sources required under Paragraph (12) of Subsection D of 20.2.70.300 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department. Such progress reports shall be consistent with the schedule of compliance and requirements of Paragraph (12) of Subsection D of 20.2.70.300 NMAC and shall contain:

(a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(3) Include such other provisions as the department may require.

H. Operational flexibility~~[-]~~.

(1) Section 502(b)(10) changes.

(a) The permittee may make Section 502(b)(10) changes, as defined in 20.2.70.7 NMAC, without applying for a permit modification, if those changes are not title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(b) For each such change, the permittee shall provide written notification to the ~~[D]~~department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(c) The permittee and department shall attach each such notice to their copy of the relevant permit.

(d) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(2) Emissions trading within a facility~~[-]~~.

(a) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under 20.2.70.302 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(b) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(c) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(d) The permittee and department shall attach each such notice to their copy of the relevant permit.

I. Off-Permit Changes~~[-]~~.

(1) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

(a) each such change meets all applicable requirements and shall not violate any existing permit term or condition;

(b) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

(c) such changes are not subject to permit modification procedures under 20.2.70.404 NMAC; and

(d) the permittee provides con-

temporaneous written notice to the [D]department and US EPA of each such change, except for changes that qualify as insignificant activities. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(2) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

J. Permit Shield[?].

(1) Except as provided in this part, the department shall expressly include in a Part 70 (20.2.70 NMAC) permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) such applicable requirements are included and are specifically identified in the permit; or

(b) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A Part 70 (20.2.70 NMAC) permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide such a shield for that provision.

(3) Nothing in this section or in any Part 70 (20.2.70 NMAC) permit shall alter or affect the following:

(a) the provisions of Section 303 of the federal act — Emergency Powers, including the authority of the administrator under that section, or the provisions of the New Mexico Air Quality Control Act, Section 74-2-10 NMSA 1978;

(b) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act; or

(d) the ability of US EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information subject to the New Mexico Air Quality Control Act, Section 74-2-13 NMSA 1978.

(4) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Subsection D of

20.2.70.400 NMAC.

(5) The permit shield shall extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Paragraph (2) of Subsection H of 20.2.70.302 NMAC, and to all terms and conditions under each operating scenario included pursuant to Paragraph (3) of Subsection A of 20.2.70.302 NMAC.

(6) The permit shield shall not extend to administrative amendments under Subsection A of 20.2.70.404 NMAC, to minor permit modifications under Subsection B of 20.2.70.404 NMAC, to Section 502(b)(10) changes under Paragraph (1) of Subsection H of 20.2.70.302 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under 20.2.70.405 NMAC.

[11/30/95; A, 11/14/98; 20.2.70.302 NMAC - Rn, 20 NMAC 2.70.III.302, 06/14/02; A, 9/6/06]

20.2.70.304 EMERGENCY PROVISION:

A. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

B. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) The permitted facility was at the time being properly operated;

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(4) The permittee fulfilled notification requirements under Paragraph (2) of Subsection E of 20.2.70.302 NMAC. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

C. In any enforcement proceeding, the permittee seeking to estab-

lish the occurrence of an emergency has the burden of proof.

D. This provision is in addition to any emergency or upset provision contained in any applicable requirement [~~except that Part 70 sources shall not be subject to the provisions of 20.2.7 NMAC (Excess Emissions during Malfunction, Startup, Shutdown, or Scheduled Maintenance) for permit terms and conditions issued under 20.2.70 NMAC~~].

[11/30/95; 20.2.70.304 NMAC - Rn, 20 NMAC 2.70.III.304, 06/14/02; A, 9/6/06]

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

This is an amendment to 20.2.72 NMAC, Section 216 effective on 9/6/06.

**20.2.72.216 NONATTAINMENT
AREA REQUIREMENTS:**

A. The requirements of this section apply to:

(1) a new source or modification of an existing source that ~~which~~ will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in 20.2.72.500 NMAC, table 1, at any location that does not meet the New Mexico ambient air quality standard for the contaminant; ~~or~~

(2) a new source or modification of an existing source that ~~which~~ is not a major stationary source or major modification as defined in 20.2.79 NMAC and ~~which~~ that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in table 1 at any location that does not meet the national ambient air quality standard for the contaminant[-]; or

(3) an existing source that does not propose an increase in emissions and that will emit a regulated air contaminant such that the ambient impact of the contaminant would exceed the significant ambient concentration in 20.2.72.500 NMAC (table 1) at any location that does not meet the national or New Mexico ambient air quality standard for the contaminant.

B. A new source or modification of an existing source subject to this section shall offset the ambient impact of its emissions by:

(1) obtaining emission offsets for proposed emissions in an amount greater than one-to-one such that a net air quality benefit will occur; and

(2) ensuring emission offsets are quantifiable, enforceable, and permanent by meeting the following sections of 20.2.79

NMAC:

- (a) 20.2.79.114 NMAC (emission offset baseline);
- (b) 20.2.79.115 NMAC (emission offsets); and
- (c) 20.2.79.117 NMAC (air quality benefit).

C. An existing source that is subject to this section shall demonstrate a net air quality benefit of at least a 20 percent reduction in ambient impact for each applicable contaminant. The 20 percent reduction shall be calculated as the projected source impact subtracted from the existing source impact divided by the existing source impact. The net air quality benefit must also meet the requirements of 20.2.79.117 NMAC (air quality benefit).

[11/30/95; 20.2.72.216 NMAC - Rn, 20 NMAC 20.2.72.II.216, 2/2/01; A, 9/6/06]

NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.5 NMAC, Section 11, effective 8-31-2006.

19.31.5.11 HUNT CODES AND PERMITS NUMBERS FOR THE SPECIAL ESTANCIA VALLEY, MIDDLE RIO GRANDE VALLEY, AND SOUTHWEST NEW MEXICO SANDHILL CRANE SEASONS:

A. Seven separate Sandhill crane seasons are scheduled with up to a total of 365 permits available. The permits will be allocated by season as follows: 2006-2007 season:

Season Dates	Hunt Code	Hunt Location	No. of permits
October 28 -29	SCR-0-101	MRGV	75
October 28-29 and November 4 -5	SCR-0-102	EV	50
November 18 -19	SCR-0-103	MRGV	65
December 9-10	SCR-0-104	MRGV	55
November 11 -12 November 4 -5, 2006 and January 6 -7, 2007	SCR-0-105	SW	60
January 13 -14, 2007	SCR-0-106	MRGV	55
October 28 through November 26	SCR-0-107	EV Falconry	5

B. Hunters who participate in the MRGV and EV seasons shall be required to check-out at designated check stations when they harvest any sandhill cranes. Those hunters participating in the southwest seasons will be requested to check-out only at designated check stations at the end of each hunt date. Falconers are required to report to the department all sandhill cranes harvested in the EV.

[19.31.5.11 NMAC - Rp, 19.31.5.11 NMAC, 7-31-2006; A, 8-31-2006]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.305.3 NMAC, Section 10, which will be effective on September 1, 2006.

8.305.3.10 CONTRACT MANAGEMENT: HSD is responsible for management of the medicaid contracts issued to MCOs/SE. HSD shall provide the oversight and administrative functions to ensure MCO/SE compliance with the terms of the medicaid contract. The collaborative or its designee shall provide the oversight and administrative functions to ensure SE compliance with the terms of its contract. HSD, as a member of the collaborative, shall provide oversight of the SE contract as it relates to medicaid behavioral health services, providers and members.

A. General contract requirements: The MCOs/SE shall meet all specified terms of the medicaid contract with HSD and the collaborative as it relates to medicaid members and services and the Health Insurance Portability and Accountability Act (HIPAA). This includes, but is not limited to, insuring confidentiality as it relates to medical records and any other health and enrollment information that identifies a particular member. The MCOs/SE shall be held harmless in conversion to HIPAA electronic transmission formats when delays are the result of implementation issues at HSD.

B. Subcontracting requirements: The MCO/SE may subcontract to a qualified individual or organization the provision of any service defined in the benefit package or other required MCO/SE functions. The MCO/SE shall submit boilerplate contract language and sample contracts for various types of subcontracts. Any substantive changes to contract templates shall be approved by HSD or the collaborative prior to issuance. The SE may assign, transfer, or delegate to the sub contractual level key management functions including, but not limited to, care coordination and universal credentialing with the explicit

it written approval of HSD or the collaborative.

(1) Credentialing requirements:

The MCO/SE shall maintain policies and procedures for verifying that the credentials of its providers and subcontractors meet applicable standards. The MCO/SE shall assure the prospective subcontractor's ability to perform the activities to be delegated.

(2) Review requirements:

The MCO/SE shall maintain a fully executed original of all subcontracts and make them accessible to HSD on request.

(3) Minimum requirements:

(a) subcontracts shall be executed in accordance with applicable federal and state laws, regulations, policies and rules;

(b) subcontracts shall identify the parties of the subcontract and the parties' legal basis of operation in the state of New Mexico;

(c) subcontracts shall include procedures and criteria for terminating the subcontract;

(d) subcontracts shall identify the services to be performed by the subcontractor and the services to be performed under other subcontracts; subcontracts must describe how members access services provided under the subcontract;

(e) subcontracts shall include reimbursement rates and risk assumption, where applicable;

(f) subcontractors shall maintain records relating to services provided to members for ~~six~~ 10 years;

(g) subcontracts shall require that member information be kept confidential, as defined by federal or state law, and be HIPAA compliant;

(h) subcontracts shall provide that authorized representatives of HSD have reasonable access to facilities, personnel and records for financial and medical audit purposes;

(i) subcontracts shall include a provision for the subcontractor to release to the MCO/SE any information necessary to perform any of its obligations;

(j) subcontractors shall accept payment from the MCO/SE for any services included in the benefit package and cannot request payment from HSD for services performed under the subcontract;

(k) if subcontracts include primary care, provisions for compliance with PCP requirements delineated in the MCO contract with HSD apply;

(l) subcontractors shall comply with all applicable state and federal statutes, rules and regulations, including the prohibition against discrimination;

(m) subcontracts shall have a provision for terminating, rescinding, or canceling the contracts for violation of applicable HSD requirements;

(n) subcontracts shall not prohibit

a provider or other subcontractor from entering into a contractual relationship with another MCO;

(o) subcontracts may not include incentives or disincentives that encourage a provider or other subcontractor to not enter into a contractual relationship with another MCO/SE;

(p) subcontracts shall not contain any gag order provisions nor sanctions against providers who assist members in accessing the grievance process or otherwise protecting member's interests; and

(q) subcontracts shall specify the time frame for submission of encounter data to the MCO/SE.

(4) **Excluded providers:** The MCO/SE shall not contract with an individual provider, or an entity, or an entity with an individual who is an officer, director, agent, or manager who owns or has a controlling interest in the entity, who has been convicted of crimes specified in Section 1128 of the Social Security Act, excluded from participation in any other state's medicaid program, medicare, or any other public or private health or health insurance program, assessed a civil penalty under the provision of Section 1128, or who has a contractual relationship with an entity convicted of a crime specified in Section 1128.

C. Provider incentive plans: The MCO/SE shall ensure that direct or indirect incentives offered in the subcontract shall not serve as an inducement to reduce or limit medically necessary services to members.

[8.305.3.10 NMAC - Rp 8.305.3.10 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.4 NMAC, Section 10, which will be effective on September 1, 2006. The Medical Assistance Division amended the sections to reflect federal regulations and clarify language related to Medicaid managed care policy.

8.305.4.10 SPECIAL SITUATIONS:

A. Newborn enrollment: The following provisions apply to newborns:

(1) ~~Newborns are automatically eligible for a period of six months and are immediately enrolled with the mother's MCO if the mother is a member at the time of the child's birth.~~ Medicaid eligible and enrolled newborns of medicaid eligible enrolled mothers are eligible for a period of 12 months starting with the month of birth.

These newborns are enrolled with the same MCO the mother had during the birth month, regardless of where the child is born (that is, in the hospital or at home).

(2) If the ~~child's~~ newborn's mother is not a member of the MCO at the time of the birth in a hospital or at home, the ~~child is enrolled~~ newborn must be medicaid enrolled and shall be MCO eligible during the next applicable enrollment cycle. ~~If such a child is hospitalized at the time of enrollment, the MCO is not responsible for the child's care until discharge.~~ At the time of the newborn's medicaid enrollment, the MCO shall only be responsible for a current hospitalization if the mother was an enrolled MCO member.

B. Hospitalized members: If a medicaid-eligible member is hospitalized in a general acute care, a rehabilitation or free-standing psychiatric hospital either at the time the member enters managed care or enters exempt status or vice versa, the MCO/SE or FFS (exempt), which was originally responsible for the hospital inpatient placement, shall remain financially responsible for the hospital-related charges until discharge or a change in the level of care. Upon discharge or change in the level of care, the member will then become the financial responsibility of the organization or entity receiving capitation payments. This does not apply to newborns born to a member mother, see Subsection A of 8.305.4.10 NMAC above. Transition services, e.g., DME supplies for the home, shall be the financial responsibility of the MCO or the SE if applicable to behavioral health.

C. Native Americans: Upon identifying himself as Native American, a Native American shall be afforded the option of participating in managed care or being covered by medicaid fee-for-service. Upon determination of medicaid eligibility, a Native American may choose to participate in managed care by enrolling in an MCO. By not enrolling in an MCO, the Native American chooses not to participate in a managed care plan and shall be covered through medicaid fee-for-service. After enrolling in an MCO, a Native American may opt out during the first 90 days of any 12-month enrollment period (disenrollment). Disenrollment is effective the following month. At the end of the lock-in period, a Native American may re-enroll in an MCO. A medicaid eligible Native American may opt-in at any time by enrolling with an MCO. If an opt-in request is made prior to the 20th of the month, the opt-in shall become effective the following month. If the opt-in request is made after the 20th of the month and before the first day of the next month, the opt-in shall be effective on the first day of the second full

month following the request. Native American enrollment in the SE is mandatory.

D. Members receiving hospice services: Members who have elected to receive hospice services and are receiving hospice services at the time they are determined eligible for medicaid will be exempt from enrolling in managed care unless they revoke their hospice election.

E. Members placed in nursing facilities: If a member is placed in a nursing facility for what is expected to be a long term or permanent placement, the MCO or the SE, if the placement relates to behavioral health, remains responsible for the member until the member is disenrolled by HSD.

F. Members in third trimester of pregnancy: A woman in her third trimester of pregnancy at the time of enrollment, who has an established obstetrical provider may continue that relationship. Refer to Paragraph (4) of Subsection H of 8.305.11.9 NMAC for special payment requirements.

G. Members placed in institutional care facilities for the mentally retarded (ICF/MR): If a member is placed in an ICF/MR for what is expected to be a long-term or permanent placement, the MCO/SE remains responsible for the member until the member is disenrolled by HSD.

H. In compliance with federal law and authorizations, HSD may mandate that a member eligible for medicaid and medicare (dual eligibles) shall be enrolled with an MCO/SE to receive benefits from the medicaid benefit package that are not provided by medicare. This program will be implemented in compliance with federal law and requirements.

[8.305.4.10 NMAC - Rp 8 NMAC 4.MAD.606.3.2, 7-1-01; A, 7-1-04; A, 7-1-05; A, 9-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.7 NMAC, Sections 9, 11, 14, 15, and 16 which will be effective on September 1, 2006. The Medical Assistance Division amended the sections to reflect federal regulations and clarify language related to Medicaid managed care policy.

8.305.7.9 BENEFIT PACKAGE: This part defines the medicaid benefit package for which the MCO/SE shall be paid fixed per-member per-month payment rates. The MCO/SE shall cover these services. The MCO/SE shall not delete benefits from the medicaid-defined benefit package.

An MCO [~~is encouraged to~~] shall provide an enhanced benefit package, which could include health-related educational, preventive, outreach and enhanced physical services. The SE shall provide enhanced behavioral health services, including behavioral health-related educational and preventive services and outreach. The MCO/SE may utilize providers licensed in accordance with state and federal requirements to deliver services.

[8.305.7.9 NMAC - Rp 8.305.7.9 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06]

8.305.7.11 SERVICES INCLUDED IN THE MEDICAID BENEFIT PACKAGE:

A. Inpatient hospital services (MCO/SE): The benefit package includes hospital inpatient acute care, procedures and services for members, as detailed in 8.311.2 NMAC, *Hospital Services*. The MCO shall comply with the maternity length of stay in the Health Insurance Portability and Accountability Act of 1996. Coverage for a hospital stay following a normal, vaginal delivery may not be limited to less than 48 hours for both the mother and the newborn child. Health coverage for a hospital stay in connection with childbirth following a caesarian section may not be limited to less than 96 hours for mother and newborn child.

B. Transplant services (MCO only): The following transplants are covered in the benefit package as long as the indications are not considered experimental or investigational: heart transplants, lung transplants, heart-lung transplants, liver transplants, kidney transplants, autologous bone marrow transplants, allogeneic bone marrow transplants and corneal transplants, as detailed in 8.325.5 NMAC, *Transplant Services*. Also see 8.325.6 NMAC, *Experimental or Investigational Procedures, Technologies or Non-Drug Therapies* for guidance on determining if transplants are experimental or investigational.

C. Hospital outpatient service (MCO/SE): The benefit package includes hospital outpatient services for preventive, diagnostic, therapeutic, rehabilitative or palliative medical or behavioral health services as detailed in 8.311.2 NMAC, *Outpatient Covered Services*.

D. Case management services (MCO/SE): The benefit package includes case management services necessary to meet an identified service need as detailed in 8.326.2 NMAC through 8.326.6 NMAC and 8.320.5 NMAC.

E. Specific case management programs: The following are specific case management programs available to medicaid members within the MCO, which meet the requirements specified in policy

manual parts:

(1) case management services for adults with developmental disabilities (MCO only): Case management services provided to adult members (21 years of age or older) who are developmentally disabled, as detailed in 8.326.2 NMAC, *Case Management Services for Adults with Developmental Disabilities*;

(2) case management services for pregnant women and their infants (MCO only): Case management services provided to pregnant women up to 60 days following the end of the month of the delivery, as detailed in 8.326.3 NMAC, *Case Management Services for Pregnant Women and Their Infants*;

(3) case management services for the chronically mentally ill (SE only): Case management services provided to adults who are 18 years of age or older and who are chronically mentally ill, as detailed in 8.326.4 NMAC, *Case Management Services for the Chronically Mentally Ill*;

(4) case management services for traumatically brain injured adults (MCO only): Case management services provided to adults who are 21 years of age or older who are traumatically brain injured, as detailed in 8.326.5 NMAC, *Case Managed Services for Traumatically Brain Injured Adults*;

(5) case management services for children up to the age of three (MCO only): Case management services for children up to the age of three who are medically at risk due to family conditions and not developmentally delayed, as detailed in 8.326.6 NMAC, *Case Management Services for Children Up to Age Three*; and

(6) case management services for the medically at risk (MCO/SE): Case management services for individuals who are under 21 who are medically at risk for physical or behavioral health conditions, as detailed in 8.320.5 NMAC, *EPSDT Case Management*; the benefit package does not include case management provided to developmentally disabled children ages 0-3 who are receiving early intervention services, or case management services provided by the children, youth and families department and defined as protective services case management or juvenile probation and parole officer case management; "medically at risk" is defined as those individuals who have a diagnosed physical or behavioral health condition which has a high probability of impairing their cognitive, emotional, neurological, social, behavioral or physical development.

F. Emergency services (MCO only): The benefit package includes inpatient and outpatient services meeting the definition of emergency services. Services ~~must~~ shall be available 24 hours per day and 7 days per week. Services

meeting the definition of emergency services ~~must~~ shall be provided without regard to prior authorization or the provider's contractual relationship with the MCO/SE. If the services are needed immediately and the time necessary to transport the member to a network provider would mean risk of permanent damage to the member's health, emergency services shall be available through a facility or provider participating in the MCO/SE network or from a facility or provider not participating in the MCO/SE network. Either provider type ~~must~~ shall be paid for the provision of services on a timely basis. Emergency services include services needed to evaluate and stabilize an emergency medical or behavioral condition. Post stabilization care services means covered services, related to an emergency medical or behavioral condition, that are provided after a member is stabilized in order to maintain this stabilized condition. This coverage may include improving or resolving the member's condition if either the MCO/SE has authorized post-stabilization services in the facility in question, or there has been no authorization; and

(1) the hospital was unable to contact the MCO/SE; or

(2) the hospital contacted the MCO/SE but did not get instructions within an hour of the request.

G. Physical health services (MCO only): The benefit package includes primary (including those provided in school-based settings) and specialty physical health services provided by a licensed practitioner performed within the scope of practice, as defined by state law and detailed in 8.310.2 NMAC, *Medical Services Providers*; 8.310.10 NMAC, *Midwife Services, including out of hospital births and other related birthing services performed by certified nurse midwives or direct-entry midwives licensed by the state of New Mexico, who are either validly contracted with and fully credentialed by the MCO or validly contracted with HSD*; 8.310.11 NMAC, *Podiatry Services*; 8.310.3 NMAC, *Rural Health Clinic Services*; and 8.310.4 NMAC, *Federally Qualified Health Center Services*.

H. Laboratory services (MCO or SE): The benefit package includes laboratory services provided according to the applicable provisions of Clinical Laboratory Improvement Act (CLIA), as detailed in 8.324.2 NMAC, *Laboratory Services*. If an inpatient physical health facility provider bills for a laboratory service where the attending physician is a psychiatrist, it shall be covered under the SE. Laboratory services provided and billed by a behavioral health provider affiliated with the SE shall be covered under the SE (e.g., residential treatment center (RTC), inpatient psych hospital, mental health clin-

ic, etc.).

I. Diagnostic imaging and therapeutic radiology services (MCO or SE): The benefit package includes medically necessary diagnostic imaging and radiology services, as detailed in 8.324.3 NMAC, *Diagnostic Imaging and Therapeutic Radiology Services*. If an inpatient physical health facility provider bills for a diagnostic imaging and therapeutic radiology service where the attending physician is a psychiatrist, it shall be covered under the SE. Diagnostic imaging and therapeutic services provided and billed by a behavioral health provider affiliated with the SE shall be covered under the SE (e.g., residential treatment center (RTC), inpatient psych hospital, mental health clinic, etc.).

J. Anesthesia services (MCO/SE) MCO: The benefit package includes anesthesia and monitoring services necessary for the performance of surgical or diagnostic procedures, as detailed in 8.310.5 NMAC, *Anesthesia Services*. Reimbursement for anesthesia related to electroconvulsive therapy (ECT) shall be the responsibility of the [SE] MCO.

K. Vision services (MCO only): The benefit package includes vision services, as detailed in 8.310.6 NMAC, *Vision Care Services*.

L. Audiology services (MCO only): The benefit package includes audiology services, as detailed in 8.324.6 NMAC, *Hearing Aids and Related Evaluation*.

M. Dental services (MCO only): The benefit package includes dental services, as detailed in 8.310.7 NMAC, *Dental Services*.

N. Dialysis services (MCO only): The benefit package includes medically necessary dialysis services, as detailed in 8.325.2 NMAC, *Dialysis Services*. Dialysis providers shall assist members in applying for and pursuing final medicare eligibility determination.

O. Pharmacy services (MCO/SE): The benefit package includes all pharmacy and related services, as detailed in 8.324.4 NMAC, *Pharmacy Services*. The MCO/SE shall maintain written policies and procedures governing its drug utilization review (DUR) program in compliance with all applicable federal Medicaid laws. The MCO/SE shall use a single Medicaid preferred drug list (PDL). The MCO shall coordinate as necessary with the SE, and the SE shall coordinate with the MCO and the member's PCP when administering pharmacy services. The SE shall be responsible for all medications prescribed by a behavioral health provider, such as psychiatrists, psychologists certified to prescribe, psychiatric clinical nurse specialists, psychiatric nurse practitioners, and any

other prescribing practitioner contracted with the SE and treating a psychiatric disorder.

P. Durable medical equipment and medical supplies (MCO only): The benefit package includes the purchase, delivery, maintenance and repair of equipment, oxygen and oxygen administration equipment, nutritional products, disposable diapers, augmentative alternative communication devices and disposable supplies essential for the use of the equipment, as detailed in 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies*.

Q. EPSDT services (MCO/SE): The benefit package includes the delivery of the federally mandated early and periodic screening, diagnostic and treatment (EPSDT) services provided by a PCP and physical or behavioral health specialist, as detailed in 8.320.2 NMAC, *EPSDT Services*. The SE shall provide access to early intervention programs/services for members identified in an EPSDT screen as being at risk for developing or having a severe emotional, behavioral or neurobiological disorder.

R. Tot-to-teen health checks (MCO only): The MCO shall adhere to the periodicity schedule and ensure that eligible members receive EPSDT screens (tot-to-teen health checks). The services include the following with respect to treatment follow-up:

(1) education of and outreach to members regarding the importance of the health checks;

(2) development of a proactive approach to ensure that the members receive the services;

(3) facilitation of appropriate coordination with school-based providers;

(4) development of a systematic communication process with MCO network providers regarding screens and treatment coordination;

(5) processes to document, measure and assure compliance with the periodicity schedule; and

(6) development of a proactive process to insure the appropriate follow-up evaluation, referral and treatment, including early intervention for vision and hearing screening, dental examinations and current immunizations; the MCO will facilitate referral to the SE for identified behavioral health conditions.

S. EPSDT private duty nursing (MCO only): The benefit package includes private duty nursing for the EPSDT population, as detailed in 8.323.4 NMAC, *EPSDT Private Duty Nursing Services*. The services shall either be delivered in the member's home or the school setting.

T. EPSDT personal care

(MCO only): The benefit package includes personal care services for the EPSDT population, as detailed in 8.323.2 NMAC, *EPSDT Personal Care Services*.

U. Services provided in schools (MCO/SE): The benefit package includes services provided in schools, excluding those specified in the individual education plan (IEP) or the individualized family service plan (IFSP), as detailed in 8.320.6 NMAC, *School-Based Services for Recipients under 21 Years Of Age*.

V. Nutritional services (MCO only): The benefit package includes nutritional services furnished to pregnant women and children as detailed in 8.324.9 NMAC, *Nutrition Services*.

W. Home health services (MCO only): The benefit package includes home health services, as detailed in 8.325.9 NMAC, *Home Health Services*. The MCO is required to coordinate home health and the home and community-based waiver programs if a member is eligible for both home health and waiver services.

X. Hospice services (MCO only): The benefit package includes hospice services, as detailed in 8.325.4 NMAC, *Hospice Care Services*.

Y. Ambulatory surgical services (MCO only): The benefit package includes surgical services rendered in an ambulatory surgical center setting, as detailed in 8.324.10 NMAC, *Ambulatory Surgical Center Services*.

Z. Rehabilitation services (MCO only): The benefit package includes inpatient and outpatient hospital and outpatient physical, occupational and speech therapy services, as detailed in 8.325.8 NMAC, *Rehabilitation Services Providers* and licensed speech and language pathology services furnished under the EPSDT program as detailed in 8.323.5 NMAC, *Licensed Speech And Language Pathologists*. The MCO is required to coordinate rehabilitation and the home health and the home and community-based waiver programs if a member is eligible for rehabilitation, home health and waiver services.

AA. Reproductive health services (MCO only): The benefit package includes reproductive health services, as detailed in 8.325.3 NMAC, *Reproductive Health Services*. The MCO will provide female members with direct access to women's health specialists within the network for covered care necessary to provide women's routine and preventive health care services. This is in addition to the member's designated source of primary care if that source is not a women's health specialist.

(1) The MCO shall provide Medicaid members with sufficient information to allow them to make informed choices

including the following:

(a) types of family planning services available;

(b) a member's right to access these services in a timely and confidential manner; and

(c) freedom to choose a qualified family planning provider who participates in the MCO network or from a provider who does not participate in the MCO network.

(2) If members choose to receive family planning services from an out-of-network provider, they shall be encouraged to exchange medical information between the PCP and the out-of-network provider for better coordination of care.

BB. Pregnancy termination procedures (MCO only): The benefit package includes services for the termination of pregnancy and pre- or post-decision counseling or psychological services [~~as detailed in 8.325.7 NMAC, Pregnancy Termination Procedures~~]. The MCO shall provide coverage of pregnancy terminations for rape, incest and endangerment to the life of the mother as allowed per 42 CFR 441.202. A certification from the provider shall be provided to the MCO prior to payment. Medically necessary pregnancy terminations which do not meet the requirements of 42 CFR 441.202 are excluded from the capitation payment made to the MCO and shall be reimbursed solely from state funds. State funded pregnancy termination services specified within the medicaid benefit package are excluded from 42 CFR 441.202 and shall be covered by the MCO pursuant to the provisions of 8.325.7 NMAC.

CC. Emergency and non-emergency transportation services (MCO only): The benefit package includes transportation service such as ground ambulance, air ambulance, taxicab and handivan, commercial bus, commercial air, meal and lodging services as indicated for medically necessary physical and behavioral health services, as detailed in 8.324.7 NMAC, *Transportation Services*. Non-emergency transportation is covered only when a member does not have a source of transportation available and when the member does not have access to alternative free sources. The MCO/SE shall coordinate efforts when providing transportation services for medicaid members/customers requiring physical or behavioral health services.

DD. Prosthetics and orthotics (MCO only): The benefit package includes prosthetic and orthotic services as detailed in 8.324.8 NMAC, *Prosthetics and Orthotics*.

[8.305.7.11 NMAC - Rp 8.305.7.11 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06]

8.305.7.14

B E H A V I O R A L

HEALTH SERVICES INCLUDED IN THE SALUD! BENEFIT PACKAGE FOR CHILDREN ONLY: The SE shall provide the following medicaid services. The benefit package includes prevention, screening, diagnostic, ameliorative services and other medically necessary behavioral health care and substance abuse treatment or services for medicaid members under 21 years of age whose need for behavioral health services is identified by a licensed health care provider and/or during an EPSDT screen. All behavioral health care services [~~must~~ shall] be provided in accordance with the current New Mexico Children's Code and the Children's Mental Health and Developmental Disabilities Act, NMSA Section 32A-6-1 to 32A-6-22. The services include the following:

A. Inpatient hospitalization in free standing psychiatric hospitals: The benefit package includes inpatient services in free standing psychiatric hospitals as detailed in 8.321.2 NMAC, *Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals*.

B. Accredited residential treatment center services: The benefit package includes accredited residential treatment services as detailed in 8.321.3 NMAC, *Accredited Residential Treatment Center Services*.

C. Nonaccredited residential treatment centers and group homes: The benefit package includes residential treatment services as detailed in 8.321.4 NMAC, *Non-Accredited Residential Treatment Centers and Group Homes*.

D. Treatment foster care: The benefit package includes treatment foster care services as detailed in 8.322.2 NMAC, *Treatment Foster Care*.

E. Treatment foster care II: The benefit package includes treatment foster care II, as detailed in 8.322.5 NMAC, *Treatment Foster Care II*.

F. Outpatient and partial hospitalization services in freestanding psychiatric hospital: The benefit package includes outpatient and partial hospitalization services provided in freestanding psychiatric hospitals, as detailed in 8.321.5 NMAC, *Outpatient and Partial Hospitalization Services in Freestanding Psychiatric Hospitals*.

G. Day treatment services: The benefit package includes day treatment services, as detailed in 8.322.4 NMAC, *Day Treatment Services*.

H. Behavior management skills development services (BMSDS): The benefit package includes behavior management services, as detailed in 8.322.3 NMAC, *Behavior Management Skills Development Services*.

I. School-based services:

The benefit package includes counseling, evaluation and therapy furnished in a school-based setting, but not when specified in the individual education plan (IEP) or the individualized family service plan (IFSP), as detailed in 8.320.6 NMAC, *School-Based Services for Recipients under 21 Years of Age*.

J. Case management services for the medically-at-risk: The benefit package includes case management services for individuals who are under 21 who are medically-at-risk for behavioral health conditions, as detailed in 8.320.5 NMAC, *EPSDT Case Management*.

K. Licensed alcohol and drug abuse counselors: The benefit package includes alcohol and drug abuse counseling, as detailed in 8.323.3 NMAC, *Licensed Alcohol and Drug Abuse Counselors*.

[8.305.7.14 NMAC - Rp 8.305.7.14 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06]

8.305.7.15 B E H A V I O R A L HEALTH SERVICES INCLUDED IN THE BENEFIT PACKAGE FOR ADULTS ONLY: The following services [~~which must~~ shall] be provided in accordance with the New Mexico Mental Health and Developmental Disabilities Code. The SE shall provide these medicaid services.

A. Psychosocial rehabilitation: The benefit package includes psychosocial rehabilitation services as detailed in 8.315.3 NMAC, *Psychosocial Rehabilitation Services*.

B. Case management services for the chronically mentally ill: The benefit package includes case management services as detailed in 8.326.4 NMAC, *Case Management Services for the Chronically Mentally Ill*.

[8.305.7.15 NMAC - Rp 8.305.7.15 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06]

8.305.7.16 ENHANCED SERVICES: MCOs/SE [~~are encouraged to~~ shall] offer members a package of enhanced services. The cost of these services cannot be included when HSD determines the payment rates. Enhanced services shall be approved by and reported to HSD. Enhanced services shall be direct services, not administrative in nature unless approved by HSD.

A. Potential enhanced services: The following are suggested enhanced services:

(1) (MCO/SE) anticipatory guidance provided as a part of the normal course of office visits or a health education program, including behavioral health;

(2) (MCO only) [~~comprehensive prenatal services including counseling;~~ child birth education, parenting skills [~~and referral to other support services~~] classes;

~~[(3) (MCO/SE) targeting the coordination of services necessary to optimize the member's level of health and functionality;~~

~~(4) (3) (MCO/SE) child abuse and neglect prevention programs;~~

~~[(5) (4) (MCO/SE) stress control programs;~~

~~[(6) (5) (MCO only) car seats for infants and children;~~

~~[(7) (6) (MCO/SE) culturally-traditional indigenous healers and treatments;~~

~~[(8) (7) (MCO/SE) smoking cessation programs;~~

~~[(9) (8) (MCO only) weight loss and nutrition programs;~~

~~[(10) (9) (MCO/SE) violence prevention [and referral for support] services;~~

~~[(11) (10) (MCO/SE) substance abuse prevention and treatment, beyond the benefit package;~~

~~[(12) (11) (MCO/SE) respite care for care givers; and~~

~~[(13) (MCO only) structured HIV education programs;~~

~~[(14) (MCO/SE) programs that educate members on how to most efficiently and effectively use the health care, including behavioral health care, system;~~

~~[(15) (12) (SE only) peer support services that utilize consumers or survivors to help persons with behavioral health conditions recover and reach their full potential; agencies, facilities or groups of providers that utilize peer supporters shall carry liability insurance to cover the peer supporters [-and].~~

~~[(16) other enhanced services, including behavioral health enhanced services, at the MCO's or SE's discretion.]~~

B. [Targeted] Member specific enhanced services: Other services may be made available to members based on the MCO's or SE's discretion. Eligibility for enhanced services may be based upon a set of assessment criteria to be employed by the MCO/SE.

[8.305.7.16 NMAC - Rp 8.305.7.16 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.305.11 NMAC, Section 9, which will be effective on September 1, 2006. The Medical Assistance Division amended the sections to reflect federal regulations and clarify language related to Medicaid managed care policy.

8.305.11.9 REIMBURSEMENT FOR MANAGED CARE:

A. Payment for services: HSD shall make actuarially sound payments under capitated risk contracts to the designated MCOs/SE. Rates negotiated between HSD and the MCO/SE are considered confidential. Rates shall be appropriate for the medicaid populations to be covered and the services to be furnished under the contract. The MCO/SE shall be responsible for the provision of services for members during the month of capitation. Medicaid members shall not be liable for debts incurred by an MCO/SE under the MCO's or SE's managed care contract for providing health care to medicaid members. This shall include, but not be limited to:

(1) the MCO's/SE's debts in the event of the MCO's/SE's insolvency;

(2) covered services provided to the member, for which HSD does not pay the MCO/SE, e.g., enhanced services;

(3) when HSD or the MCO/SE does not pay the health care provider that furnishes the services under contractual, referral, or other arrangement;

(4) payments for covered services furnished under contract, referral, or other arrangement to the extent that those payments are in excess of the amount that the member would owe if the MCO/SE provided the service directly; and

(5) if an MCO/SE member loses eligibility for any reason and is reinstated as eligible by HSD before the end of the month, the MCO/SE shall accept a retro capitation payment for that month of eligibility and assume financial responsibility for all medically necessary covered benefit services supplied to the member.

B. Capitation disbursement requirements: The MCO/SE shall accept the capitation rate paid each month by HSD as payment in full for all services to be provided pursuant to the agreement, including all administrative costs associated therewith. A minimum of eighty-five percent (85%) of all the MCO's/SE's income generated under this agreement, including but not limited to, third-party recoupments and interest, shall be expended on the physical or behavioral health services required under this agreement to be provided to the MCO's/SE's medicaid members. If the MCO/SE does not expend a minimum of eighty-five percent (85%) on physical or behavioral health services required under the agreement, HSD shall withhold an amount so that the MCO's/SE's ratio for service expenditures is eighty-five percent (85%). HSD shall calculate the MCO's/SE's income at the end of the state fiscal year to determine if eighty-five percent (85%) was expended on the physical or behavioral services required under the agreement/contract, utilizing reported information from the MCO/SE and the depart-

ment of insurance reports. Administrative costs, which shall be no higher than fifteen percent (15%), and other financial information shall be monitored on a regular basis by HSD. Members shall be entitled to receive all covered services for the entire period for which payment has been made by HSD. Any and all costs incurred by the MCO/SE in excess of the capitation payment shall be borne in full by the MCO/SE. Interest generated through investment of funds paid to the MCO/SE pursuant to this agreement shall be the property of the MCO/SE.

C. Payment time frames: Clean claims as defined in Subsection L of 8.305.1.7 NMAC, *Clean*

Claim, shall be paid by the MCO/SE to contracted and noncontracted providers according to the following timeframe: 90% within 30 days of the date of receipt and 99% within 90 days of the date of receipt, as required by federal guidelines in the Code of Federal Regulations, Section 42 CFR 447.45. The date of receipt is the date the MCO/SE receives the claim, as indicated by the MCO's/SE's date stamp on the claim. The date of payment is the date of the check or other form of payment. An exception to this rule may be made if the MCO/SE and its providers, by mutual agreement, establish an alternative payment schedule; however, any such alternative payment schedule shall first be incorporated into the contract between HSD and the MCO/SE. The MCO/SE shall promptly pay claims for all covered emergency and post-stabilization services that are furnished by non-contracted providers, including medically or clinically necessary testing to determine if a physical or behavioral health emergency exists.

(1) An MCO/SE shall pay contracted and noncontracted providers interest on the MCO's/SE's liability at the rate of 1 1/2 % per month on the amount of a clean claim (based upon the current medicaid fee schedule) submitted by the participating provider and not paid within 30 days of the date of receipt of an electronic claim and 45 days of receipt of a manual claim. Interest shall accrue from the 31st day for electronic claims and from the 46th day for manual claims.

(2) No contract between the MCO/SE and a participating provider shall include a clause that has the effect of relieving either party of liability for its actions or inactions.

(3) If the MCO/SE is unable to determine liability for, or refuses to pay, a claim of a participating provider within the times specified above, the MCO/SE shall make a good-faith effort to notify the participating provider by fax, electronic or other written communication within 30 days of receipt of the claim, stating specific

reasons why it is not liable for the claim or request specific information necessary to determine liability for the claim.

D. Rate setting:

Capitation rates paid by HSD to the MCO/SE for the provision of the managed care medicaid benefit package shall be calculated through actuarial analysis, be actuarially sound and meet the standards set by 42 CFR 438.6(c).

E. Payment on risk

basis: The MCO/SE is at risk of incurring losses if its costs of providing the managed care medicaid benefit package exceed its capitation payment. HSD shall not provide retroactive payment adjustments to the MCO/SE to reflect the actual cost of services furnished by the MCO/SE.

F. Change in capitation

rates: HSD shall review the capitation rates 12 months from the effective date of the contract and annually thereafter. HSD may adjust the capitation rates based on factors such as the following: changes in the scope of work; CMS requiring a modification of the state's waiver; if new or amended federal or state laws or regulations are implemented; inflation; or if significant changes in the demographic characteristics of the member population occur.

G. Solvency requirements and risk

protections: An MCO/SE that contracts with HSD to provide medicaid physical or behavioral health services shall comply with, and be subject to, all applicable state and federal laws and regulations, including solvency and risk standards. In addition to requirements imposed by state and federal law, the MCO/SE shall be required to meet specific medicaid financial requirements and to provide to HSD the information and records necessary to determine the MCO's/SE's financial condition. Requests for information and records shall be delivered to HSD, at no cost to HSD, in a reasonable time after the date of request or as specified in the contract.

(1) **Reinsurance:** An MCO/SE participating in medicaid managed care shall purchase reinsurance at a minimum of one million dollars (\$1,000,000.00) in reinsurance protection against financial loss due to outlier (catastrophic) cases. The MCO/SE shall document for HSD that reinsurance is in effect through the term of the contract and that the amount of reinsurance is sufficient to cover probable outlier cases or overall member utilization at an amount greater than expected. Pursuant to 42 CFR 438.6(e)(5), contract provisions for reinsurance, stop-loss limits, or other risk sharing methodologies shall be computed on an actuarially sound basis.

(2) **Third party liability (TPL):** By federal law medicaid is the payer of last resort. The MCO/SE shall be responsible for identifying a member's third party cov-

erage and coordinating of benefits with third parties. The MCO/SE shall inform HSD when a member has other health care insurance coverage. The MCO shall have the sole right of subrogation, for twelve (12) months, from when the MCO incurred the cost on behalf of the members, to initiate recovery or to attempt to recover any third-party resources available to medicaid members and shall make records pertaining to third party collections (TPL) for members available to HSD/MAD for audit and review. If the MCO has not initiated recovery or attempted to recover any third-party resources available to medicaid members within twelve (12) months, HSD will pursue the member's third party resources. The MCO/SE shall provide to HSD for audit and review all records pertaining to TPL collections for members.

(3) **Fidelity bond requirement:**

The MCO/SE shall maintain a fidelity bond in the maximum amount specified under the Insurance Code.

(4) **Net worth requirement:** The MCO/SE shall comply with the net worth requirements of the Insurance Code.

(5) **Solvency cash reserve requirement:** The MCO/SE shall have sufficient reserve funds available to ensure that the provision of services to medicaid members is not at risk in the event of MCO/SE insolvency.

(6) **Per enrollee cash reserve:**

The MCO/SE shall maintain three (3) percent of the monthly capitation payments per member with an independent trustee during each month of the first year of the agreement; provided, however, that if this agreement replaces or extends a previous agreement with HSD to provide medicaid managed care, then continued maintenance of the per member cash reserve established and maintained by the MCO/SE pursuant to such previous agreement shall be the agreement. HSD shall adjust this cash reserve requirement annually, or as needed, based on the number of the MCO's/SE's members. Each MCO/SE shall maintain its own cash reserve account. This account may be accessed solely for payment for services to the MCO's/SE's members in the event that the MCO/SE becomes insolvent. Money in the reserve account remains the property of the MCO/SE, and any interest earned (even if retained in the account) shall be the property of the MCO/SE.

H. Inspection and audit

for solvency requirements: The MCO/SE shall meet all requirements for state licensure with respect to inspection and auditing of financial records. The MCO/SE shall cooperate with HSD, or its designee to provide all financial records required by HSD. HSD, or their designees may inspect and audit the MCO's/SE's financial records at least annually, or more frequently, if

deemed necessary.

I. Special payment requirements: This section lists special payment requirements by provider type.

(1) **Reimbursement for FQHCs:**

Under federal law, FQHCs shall be reimbursed at 100% of reasonable cost under a medicaid fee-for-service or managed care program. The FQHC may waive its right to 100% of reasonable cost and elect to receive a rate negotiated with the MCO/SE. HSD shall provide a discounted wrap-around payment to FQHCs that have waived a right to 100% reimbursement of reasonable cost from the MCO/SE.

(2) **Reimbursement for providers furnishing care to Native Americans:**

If an Indian health service (IHS) or tribal 638 provider delivers services to an MCO/SE member who is Native American, the MCO/SE shall reimburse the provider at the rate currently established by the office of management and budget (OMB) for specified services for the IHS facilities, or the medicaid fee-for-service rate for all other services or at a fee negotiated between the provider and the MCO/SE.

(3) **Reimbursement for family**

planning services: The MCOs shall reimburse out-of-network family planning providers for services provided to MCO members at a rate at least equal to the medicaid fee-for-service rate for the provider type.

(4) **Reimbursement for women in the third trimester of pregnancy:**

If a woman in the third trimester of pregnancy at the time of her enrollment in managed care has an established relationship with an obstetrical provider and desires to continue that relationship and the provider is not contracted with the MCO, the MCO shall reimburse the out-of-network provider for care directly related to the pregnancy, including delivery and a six-week post-partum visit.

(5) **Reimbursement for members who disenroll while hospitalized:**

If a medicaid member is hospitalized at the time of disenrollment, the organization MCO/SE or FFS exempt, which was originally responsible for the hospital inpatient placement, shall remain financially responsible for payment of all covered inpatient facility and professional services from the date of admission to the date of discharge, or upon transfer to a lower level of care. Upon discharge, the member will then become the financial responsibility of the organization receiving capitation payments.

(6) **Sanctions for noncompliance:**

The department may impose sanctions against an MCO/SE that fails to meet the financial requirements specified in this section or additional requirements specified in the terms of the medicaid managed care contract or federal medicaid law.

J. Recoupment pay-

ments: HSD shall have the discretion to recoup payments for MCO members who are incorrectly enrolled with more than one MCO, including members categorized as newborns or X5; payments made for MCO/SE members who die prior to the enrollment month for which payment was made; and/or payments to the MCO/SE for members whom HSD later determines were not eligible for medicaid during the enrollment month for which payment was made. Any duplicate payment identified by either the MCO/SE or HSD shall be recouped upon identification. HSD periodically shall recoup capitations for individuals who should not have been enrolled with the MCO/SE. ~~[If the MCO/SE has incurred provider expense for the individual for the month of capitation, reconciliation shall be done. If no expense has been incurred, the entire capitation shall be recouped by HSD. To allow for claim submission lags, HSD shall not request a payment recoupment until 120 days have elapsed from the date on which the enrollment/claims payment error was made.]~~ In the event of an error, which causes payment(s) to the MCO/SE to be issued by HSD, the MCO/SE shall reimburse ~~[the state]~~ HSD within thirty (30) days of written notice of such error for the full amount of the payment, subject to the provisions of Section 5.6 (4) of the agreement. Interest shall accrue at the statutory rate on any amounts not paid and determined to be due after the thirtieth (30th) day following the notice. Any process that automates the recoupment procedures ~~[shall be mutually agreed upon]~~ shall be discussed in advance by HSD and the MCO/SE and documented in writing, prior to implementation of the new automated recoupment process. The MCO/SE has the right to dispute any recoupment request in accordance with Article 15 (DISPUTES).

K. HSD shall pay interest at 9% per annum on any capitation payment due to the MCO/SE that is more than 30 days late. No interest or penalty shall accrue for any other late payments or reimbursements.

L. HSD may initiate alternate payment methodology for specified program services or responsibilities. [8.305.11.9 NMAC - Rp 8 NMAC 4.MAD.606.10, 7-1-01; A, 7-1-04; A, 7-1-05; A, 9-1-06]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.305.12 NMAC, Sections 12, 13, 15, and 16 which will be effective on September 1, 2006. The Medical Assistance Division amended the sections to reflect federal regulations and

clarify language related to Medicaid managed care policy.

8.305.12.12 APPEALS: An appeal is a request for review by the MCO/SE of an MCO/SE action.

A. An action is defined as:

(1) the denial or limited authorization of a requested service, including the type or level of service;

(2) the reduction, suspension, or termination of a previously authorized service;

(3) the denial, in whole or in part, of payment for a service;

(4) the failure of the MCO/SE to provide services in a timely manner, as defined by HSD; or

(5) the failure of the MCO/SE to complete the authorization request in a timely manner as defined in 42 CFR 438.408.

B. **Notice of MCO/SE action:** The MCO/SE shall mail a notice of action to the member and/or provider within 10 days of the date of the action, except for denial of claims that may result in member financial liability, which requires immediate notification. The notice shall contain, but not be limited to, the following:

(1) the action the MCO/SE has taken or intends to take;

(2) the reasons for the action;

(3) the member's or the provider's right to file an appeal of the MCO/SE action through the MCO/SE;

(4) the member's right to request an HSD fair hearing and what the process would be;

(5) the procedures for exercising the rights specified;

(6) the circumstances under which expedited resolution of an appeal is available and how to request it;

(7) the member's right to have benefits continue pending resolution of an appeal, how to request the continuation of benefits, and the circumstances under which the member may be required to pay the costs of continuing these benefits.

C. A member may file an appeal of an MCO/SE action within 90 calendar days of receiving the MCO's/SE's notice of action. The legal guardian of the member for a minor or an incapacitated adult, a representative of the member as designated in writing to the MCO/SE, or a provider acting on behalf of the member with the member's written consent, have the right to file an appeal of an action on behalf of the member. The MCO/SE shall consider the member, representative, or estate representative of a deceased member as parties to the appeal.

D. The MCO/SE has thirty (30) calendar days from the date the initial

oral or written appeal is received by the MCO/SE to resolve the appeal.

E. The MCO/SE shall have a process in place that ensures that an oral or written inquiry from a member seeking to appeal an action is treated as an appeal (to establish the earliest possible filing date for the appeal). An oral appeal shall be followed by a written appeal within 10 calendar days that is signed by the member. The MCO/SE shall use its best efforts to assist members as needed with the written appeal.

F. Within five (5) working days of receipt of the appeal, the MCO/SE shall provide the grievant with written notice that the appeal has been received and the expected date of its resolution. The MCO/SE shall confirm in writing receipt of oral appeals, unless the member or the provider requests an expedited resolution.

G. The MCO/SE may extend the 30-day timeframe by 14 calendar days if the member requests the extension, or the MCO/SE demonstrates to HSD that there is need for additional information, and the extension is in the member's interest. For any extension not requested by the member, the MCO/SE shall give the member written notice of the extension and the reason for the extension within two (2) working days of the decision to extend the timeframe.

H. The MCO/SE shall provide the member and/or the member's representative a reasonable opportunity to present evidence of the facts or law, in person as well as in writing.

I. The MCO/SE shall provide the member and/or the representative the opportunity, before and during the appeals process, to examine the member's case file, including medical or clinical records (subject to HIPAA requirements), and any other documents and records considered during the appeals process. The MCO/SE shall include as parties to the appeal the member and his or her representative, or the legal representative of a deceased member's estate.

J. For all appeals, the MCO/SE shall provide written notice within the 30-calendar-day timeframe for resolutions to the member or the provider, if the provider filed the appeal.

(1) The written notice of the appeal resolution shall include, but not be limited to, the following information:

(a) the results of the appeal resolution; and

(b) the date it was completed.

(2) The written notice of the appeal resolution for appeals not resolved wholly in favor of the member shall include, but not be limited to, the following information:

(a) the right to request an HSD fair hearing and how to do so;

(b) the right to request receipt of benefits while the hearing is pending, and how to make the request; and

(c) that the member may be held liable for the cost of continuing benefits if the hearing decision upholds the MCO's/SE's action.

K. The MCO/SE may continue benefits while the appeal and/or the HSD fair hearing process is pending.

(1) The MCO/SE shall continue the member's benefits if all of the following are met:

(a) ~~the member or the provider files a timely appeal of the MCO/SE action (within 10 days of the date on the notice of action from the MCO/SE)]~~ the member or the provider files a timely appeal of the MCO/SE action and/or asks for a fair hearing within 13 days from the date on the MCO/SE notice of action;

(b) the appeal involves the termination, suspension, or reduction of a previously authorized course of treatment;

(c) the services were ordered by an authorized provider;

(d) the time period covered by the original authorization has not expired; and

(e) the member requests extension of the benefits.

(2) The MCO/SE shall provide benefits until one of the following occurs:

(a) the member withdraws the appeal;

(b) ten days have passed since the date ~~the~~ of the resolution letter, provided the resolution of the appeal was against the member and the member has taken no further action;

(c) HSD issues a hearing decision adverse to the member;

(d) the time period or service limits of a previously authorized service has expired.

(3) If the final resolution of the appeal is adverse to the member, that is, the MCO's/SE's action is upheld, the MCO/SE may recover the cost of the services furnished to the member while the appeal was pending, to the extent that services were furnished solely because of the requirements of this section and in accordance with the policy in 42 CFR 431.230(b).

(4) If the MCO/SE or HSD reverses a decision to deny, limit, or delay services, and these services were not furnished while the appeal was pending, the MCO/SE shall authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires.

(5) If the MCO/SE or HSD reverses a decision to deny, limit or delay services and the member received the disputed services while the appeal was pend-

ing, the MCO/SE shall pay for these services.

[8.305.12.12 NMAC - Rp 8.305.12.12 NMAC, 7-1-04; A. 7-1-05; A. 9-1-06]

8.305.12.13 EXPEDITED RESOLUTION OF APPEALS: An expedited resolution of an appeal is an expedited review by the MCO/SE of an MCO/SE action.

A. The MCO/SE shall establish and maintain an expedited review process for appeals when the MCO/SE determines that allowing the time for a standard resolution could seriously jeopardize the member's life or health or ability to attain, maintain, or regain maximum function. Such a determination is based on:

(1) a request from the member;

(2) a provider's support of the member's request;

(3) a provider's request on behalf of the member; or

(4) the MCO's/SE's independent determination.

B. The MCO/SE shall ensure that the expedited review process is convenient and efficient for the member.

C. The MCO/SE shall resolve the appeal within three (3) working days of receipt of the request for an expedited appeal, if the request meets the definition of expedited in Subsection A of 8.305.12.13 NMAC. In addition to written resolution notice, the MCO/SE shall also make reasonable efforts to provide and document oral notice.

D. The MCO/SE may extend the timeframe by up to 14 calendar days if the member requests the extension, or the MCO/SE demonstrates to HSD that there is need for additional information and the extension is in the member's interest. For any extension not requested by the member, the MCO/SE shall give the member written notice of the reason for the delay.

E. The MCO/SE shall ensure that punitive action is not taken against a member or a provider who requests an expedited resolution or supports a member's expedited appeal.

F. The MCO/SE shall provide an expedited resolution, if the request meets the definition of an expedited appeal, in response to an oral or written request from the member or provider on behalf of the member.

G. The MCO/SE shall inform the member of the limited time available to present evidence and allegations in fact or law.

H. If the MCO/SE denies a request for an expedited resolution of an appeal, it shall:

(1) transfer the appeal to the thirty (30)-day timeframe for standard resolu-

tion, in which the 30-day period begins on the date the MCO/SE received the original request for appeal;

(2) make reasonable efforts to give the member prompt oral notice of the denial, and follow up with a written notice within two (2) calendar days; and

(3) inform the member in the written notice of the right to file an appeal and/or request an HSD fair hearing if the member is dissatisfied with the MCO's/SE's decision to deny an expedited resolution.

I. The MCO/SE shall document in writing all oral requests for expedited resolution and shall maintain the documentation in the case file.

[8.305.12.13 NMAC - Rp 8.305.12.12 NMAC, 7-1-04; A. 7-1-05; A. 9-1-06]

8.305.12.15 OTHER RELATED MCO PROCESSES:

A. **Information about grievance system to providers and subcontractors:** The MCO/SE shall provide information specified in 42 CFR 438.10(g)(1) about the grievance system to all providers and subcontractors at the time they enter into a contract.

B. **Grievance and/or appeal files:**

(1) All grievance and/or appeal files shall be maintained in a secure and designated area and be accessible to HSD, upon request, for review. Grievance and/or appeal files shall be retained for ~~six (6)~~ 10 years following the final decision by the MCO/SE, HSD, an administrative law judge, judicial appeal, or closure of a file, whichever occurs later.

(2) The MCO/SE shall have procedures for assuring that files contain sufficient information to identify the grievance and/or appeal, the date it was received, the nature of the grievance and/or appeal, notice to the member of receipt of the grievance and/or appeal, all correspondence between the MCO/SE and the member, the date the grievance and/or appeal is resolved, the resolution, the notices of final decision to the member, and all other pertinent information.

(3) Documentation regarding the grievance shall be made available to the member, if requested.

[8.305.12.15 NMAC - Rp 8.305.12.15 NMAC, 7-1-04; A. 7-1-05; A. 9-1-06]

8.305.12.16 MCO/SE PROVIDER GRIEVANCE AND APPEAL PROCESS:

The MCO/SE shall establish and maintain written policies and procedures for the filing of provider grievances and appeals. A provider shall have the right to file a grievance or an appeal with the MCO/SE ~~[regarding provider payment issues]~~. Provider grievances or appeals

shall be resolved within 30 calendar days. If the grievance or appeal is not resolved within 30 days, the MCO/SE shall request a 14 day extension from the provider. If the provider requests the extension, the extension shall be approved by the MCO/SE. A provider may not file a grievance or an appeal on behalf of a member without written designation by the member as the member's representative. A provider shall have the right to file an appeal with the MCO/SE regarding provider payment issues. See 8.305.12.13 NMAC for special rules for certain expedited service authorizations. [8.305.12.16 NMAC - Rp 8.305.12.17 NMAC, 7-1-04; A, 7-1-05; A, 9-1-06]

NEW MEXICO BOARD OF PHARMACY

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 30 COMPOUNDING OF NON-STERILE PHARMACEUTICALS

16.19.30.1 ISSUING AGENCY: Regulation and Licensing Department - Board of Pharmacy
[16.19.30.1 NMAC - N, 09-15-06]

16.19.30.2 SCOPE: All pharmacies as defined in 61-11-2 (S), (Y) NMSA 1978, and all persons or entities that own or operated, or are employed by a pharmacy for the purpose of providing pharmaceutical products or services.
[16.19.30.2 NMAC - N, 09-15-06]

16.19.30.3 STATUTORY AUTHORITY: Sections 61-11-9(A)(6) NMSA 1978 requires that the board of pharmacy provide for the licensing or retail pharmacies and nonresident pharmacies and for the inspection of their facilities and activities.
[16.19.30.3 NMAC - N, 09-15-06]

16.19.30.4 DURATION: Permanent
[16.19.30.4 NMAC - N, 09-15-06]

16.19.30.5 EFFECTIVE DATE: 09-15-06, unless a later date is cited at the end of a section.
[16.19.30.5 NMAC - N, 09-15-06]

16.19.30.6 OBJECTIVE: The objective of part 30 of chapter 19 is to provide standards for the compounding of non-sterile pharmaceuticals. Pharmacies compounding non-sterile pharmaceuticals shall comply with the requirements of this section in addition to all provisions for their specific license classification.
[16.19.30.6 NMAC - N, 09-15-06]

16.19.30.7 DEFINITIONS: In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise.

A. "Beyond-use date" the date after which a compounded preparation should not be used and is determined from the date the preparation was compounded.

B. "Component" any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product labeling.

C. "Compounding" the preparation, mixing assembling, packaging, or labeling of a drug or device (reconstitution of commercial products is not considered compounding for purposes of this article).

(1) as the result of a practitioner's prescription order, based on the practitioner-patient-pharmacist relationship in the course of professional practice;

(2) preparing limited quantities of prescription orders based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice;

(3) reconstitution of commercial products not considered compounding for purpose of this article.

D. "FDA" Food and Drug Administration.

E. "SOP's" standard operating procedures.

F. "USP/NF" the current edition of the United States Pharmacopeia/National Formulary.
[16.19.30.7 NMAC - N, 09-15-06]

16.19.30.8 PERSONNEL:

A. Pharmacist-in-charge. The pharmacist-in-charge shall have the responsibility for, at a minimum, the following concerning non-sterile compounding:

(1) determining that all personnel involved in non-sterile compounding possess the education, training, and proficiency necessary to properly and as safely perform compounding duties undertaken or supervised;

(2) determining that all personnel involved in non-sterile compounding obtain continuing education appropriate for the type of compounding done by the personnel;

(3) assuring that the equipment used in compounding is properly maintained;

(4) maintaining an appropriate environment in the area where non-sterile

compounding occurs and;

(5) assuring that effective quality control procedures are developed and followed.

B. Pharmacists. Special requirements for non-sterile compounding;

(1) all pharmacists engaged in compounding shall:

(a) possess the education, training and proficiency necessary to properly and safely perform compounding duties undertaken or supervised and

(b) obtain continuing education for the type of compounding done by the pharmacist.

(2) A pharmacist shall inspect and approve all components, drug product containers, closures, labeling and any other material involved in the compounding process.

(3) A pharmacist shall review all compounding records for accuracy and conduct in-process and final checks to assure that errors have not occurred in the compounding process.

(4) A pharmacist is responsible for the proper maintenance, cleanliness and use of all equipment used in the compounding process.

C. Pharmacy technicians. All technicians engaged in compounding shall:

(1) possess the education, training and proficiency necessary to properly and safely perform compounding duties undertaken;

(2) obtain continuing education for the type of compounding done by the pharmacy technician; and

(3) perform compounding duties under the direct supervision of and responsible to a pharmacist.

D. Training. All personnel involved in non-sterile compounding shall be trained and must participate in continuing relevant training programs.
[16.19.30.8 NMAC - N, 09-15-06]

16.19.30.9 OPERATIONAL STANDARDS:

A. General requirements.

(1) Non-sterile drug products may be compounded in licensed pharmacies as a result of a practitioner's prescription order based on the practitioner-patient-pharmacist relationship in the course of professional practice.

(2) Preparing limited quantities of prescription drug orders in anticipation based upon a history of receiving valid prescriptions issued within an established practitioner-patient-pharmacist relationship in the course of professional practice.

(a) The beyond-use date should be based on the criteria outlined in USP Chapter <795>.

(b) Any product compounded in anticipation of future prescription drug or medication orders shall be labeled. Each label shall contain:

(i) name and strength of the compounded medication or list of the active ingredient and strengths;

(ii) facility's lot number;

(iii) beyond-use date;

(iv) quantity or amount in the container.

(3) Commercially available product may be compounded for dispensing to individual patients provided the following conditions are met:

(a) the commercial product is not reasonably available from normal distribution channels in a timely manner to meet patient's needs; and

(b) the prescribing practitioner has requested that the drug be compounded; or

(c) if the compounded product is changed to produce for that patient a significant difference, as authorized by the prescriber, between the compounded drug and the comparable commercially available drug product, or if use of the compounded product is in the best interest of the patient; "significant difference" would include the removal of a dye for medical reason such as an allergic reaction; when a compounded product is to be dispensed in place of a commercially available product, the prescriber and patient shall be informed that the product will be compounded.

(4) Compounding for a prescriber's office use.

(a) Pharmacies may prepare compounding drug products for a duly authorized prescriber's office use.

(b) An order by the duly authorized prescriber, indicating the formula and quantity ordered will be filed in the pharmacy.

(c) The product is to be administered in the office.

(d) A record of the compounded drug product may be kept as a prescription record in the pharmacy computer or by hard-copy record.

(e) A label may be generated and a number assigned by the pharmacy computer for the compounded drug product.

(5) Compounding veterinarian products.

(a) Prescriptions for animals may be compounded based on an order or prescription from a duly authorized veterinarian.

(b) These prescriptions are to be handled and filled the same as the human prescriptions.

(6) Compounding pharmacies/pharmacists may advertise and promote the fact that they provide non-ster-

ile prescription compounding services which may include specific drug products and classes of drugs.

B. Environment.

(1) Pharmacies regularly engaging in compounding shall have a designated and adequate area for the safe and orderly compounding of drug products including the placement of equipment and materials. Pharmacies involved in occasional compounding shall prepare an area prior to each compounding activity, which is adequate for safe and orderly compounding.

(2) Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of a drug compounding operation.

(3) A sink with hot and cold running water, exclusive of rest room facilities, shall be accessible to the compounding areas and be maintained in a sanitary condition.

(4) When drug products that require special precautions to prevent contamination, such as penicillin, are involved in a compounding operation, appropriate measures, including dedication of equipment for such operations or the meticulous cleaning of contaminated equipment prior to its use for the preparation of other drug products, must be used in order to prevent cross-contamination.

C. Equipment and Supplies. The pharmacy shall:

(1) have a class A prescription balance, or analytical balance and weights when necessary which shall be properly maintained and subject to inspection by the New Mexico board of pharmacy and;

(2) have equipment and utensils necessary for the proper compounding of prescription or medication drug orders; such equipment and utensils used in the compounding process shall be:

(a) of appropriate design and capacity, and be operated within designated operational limits;

(b) of suitable composition so that surfaces that contact components, in-process material or drug products shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quality or purity of the drug product beyond the desired result;

(c) cleaned and sanitized appropriately prior to each use and;

(d) routinely inspected, calibrated when necessary or checked to ensure proper performance.

D. Labeling. In addition to the labeling requirements of the pharmacy's specific license classification, the label dispensed or distributed pursuant to a prescription or medication drug order shall contain the following:

(1) the generic name(s) or the designated name and the strength of the com-

pounded preparation;

(2) the quantity dispensed;

(3) the date on which the product was compounded;

(4) a lot or batch number, and;

(5) the beyond-use date after which the compounded preparation should not be used;

(a) in the absence of stability information applicable for a specific drug in the USP/NF the preparation shall adhere to the following maximum beyond-use date guidelines:

(i) non-aqueous liquids and solid formulations (where the manufactured drug product is the source of active ingredient) 25% of the time remaining until the manufacturer's product's expiration date or six (6) months, whichever is earlier;

(ii) water-containing formulations (prepared from ingredients in solid form) not later than fourteen (14) days when refrigerated between 2-8 degrees Celsius or 36-46 degrees Fahrenheit;

(iii) all other formulations: intended duration of therapy or 30 days, whichever is earlier;

(b) beyond-use date limits may be exceeded when supported by valid scientific stability information for the specific compounded preparation.

E. Drugs, components and material used in non-sterile compounding.

(1) Drugs used in non-sterile compounding shall preferably be a USP/NF grade substance manufactured in a FDA registered facility.

(2) In the event that USP/NF grade substances are not available, documentation of stability and purity must be established and documented.

(3) A pharmacy may not compound a drug product which has been withdrawn or removed from the market for safety reasons.

F. Compounding Process. The safety, quality and performance of compounded prescriptions depend on correct ingredients and calculations, accurate and precise measurements, appropriate formulation conditions and procedures, and prudent pharmaceutical judgment. Each pharmacy shall develop and follow written SOP's based on established compounding procedures as outlined in chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations designed to ensure accountability, accuracy, quality, safety, and uniformity in the compounding process.

G. Quality Control.

(1) The safety, quality, and monitoring is used to insure that the output of compounded drug products for uniformity and consistency such as capsule weight variations, adequacy of mixing, clarity or pH of solutions are met. When developing

these procedures, pharmacy personnel shall consider the provisions of Chapter 795 of the USP/NF concerning pharmacy compounding of non-sterile preparations, chapter 1075 of the USP/NF concerning good compounding practices, and chapter 1160 of the USP/NF concerning pharmaceutical calculations in prescription compounding. Such procedures shall be documented and be available for inspection.

(2) Compounding procedures that are routinely performed, including batch compounding, shall be completed and verified according to written procedures. The act of verification of a compounding procedure involves checking to ensure that calculations, weighing and measuring, order of mixing, and compounding techniques were appropriate and accurately performed.

(3) Unless otherwise indicated or appropriate, compounded preparations are to be prepared to ensure that each preparation shall contain not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated and labeled quantity of active ingredient per unit volume and not less than 90.0 percent and not more than 110.0 percent of the theoretically calculated weight or volume per unit of the preparation.

[16.19.30.9 NMAC - N, 09-15-06]

16.19.30.10 RECORDS:

A. Maintenance of records. Every record required by this section shall be kept by the pharmacy for at least three (3) years.

B. Compounding records.

(1) Formulation records:

(a) provides a consistent source document for preparing the preparation (recipe);

(b) is a file of individual compounded preparations;

(c) must list the name, strength, and dosage form of the preparation compounded;

(d) must list all ingredients and their quantities;

(e) must list equipment needed to prepare the preparation, when appropriate, and mixing instructions;

(f) other environmental controls, such as the duration of mixing and other factors pertinent to the replication of the preparation as compounded; and

(g) must contain beyond-use date and methodology, the container used in dispensing, the storage requirements, and any quality control procedures.

(2) Compounding records:

(a) document the actual ingredients in the preparation and the person responsible for the compounding activity;

(b) contain the name and strength of the compounded preparation, the formu-

lation record reference for the preparation, and the sources and lot numbers of the ingredients;

(c) contain information on the total number of dosage units compounded, the name of the person who prepared the preparation and the name of the pharmacist who approved the preparation;

(d) contain the date of the preparation, the assigned internal identification number or the prescription number and an assigned beyond-use date; and

(e) for all compounded preparations, results of quality control procedures are to be recorded.

[16.19.30.10 NMAC - N, 09-15-06]

History of 16.19.30 NMAC;
[RESERVED]

NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.17 NMAC, change to the part name of Part 17, Sections 1, 2, 3, 6, 7, and adding new Section 8, effective 09-15-06.

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 17 D A N G E R O U S DRUGS and DANGEROUS DRUG RESEARCH

16.19.17.1 ISSUING AGENCY: Regulation and Licensing Department — Board of Pharmacy, [~~1650 University Blvd, NE Ste. 400B, Albuquerque, NM 87102, (505) 841-9102~~]

[02-15-1889...02-15-96; 16.19.17.1 NMAC - Rn, 16 NMAC 19.17.1, 03-30-02; A, 09-15-06]

16.19.17.2 SCOPE: All individuals or entities who sell, dispose of or possess any dangerous drug[~~;~~], **including institutions of higher education, private organizations, or other applicants who do not possess a pharmacy license, and are not subject to licensure with any professional licensing board or the New Mexico department of health.**

[02-15-96; 16.19.17.2 NMAC - Rn, 16 NMAC 19.17.2, 03-30-02; A, 09-15-06]

16.19.17.3 STATUTORY AUTHORITY: Section 26-1-18 of the New Mexico Drug, Device and Cosmetic Act, Chapter 26, Article 1 NMSA 1978, authorizes the board of pharmacy to promulgate regulations for the efficient enforcement of the act and to declare, by regulation, a substance a dangerous drug. **Section 61-11-6.A(6) NMSA 1978 authorizes the**

board to provide for the licensing of all places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities. Section 26-1-16.A(2) NMSA 1978 authorizes the board to license any person to sell, dispose of or possess any dangerous drug. Appropriate records of receipt and disposition must be kept.

[02-15-96; 16.19.17.3 NMAC - Rn, 16 NMAC 19.17.3, 03-30-02; A, 09-15-06]

16.19.17.6 OBJECTIVE: The objective of Part 17 of Chapter 19 is to provide notice of the board's designation of particular substances as dangerous drugs[~~;~~]**and for the licensure of dangerous drug researchers. A dangerous drug researcher will be allowed to possess dangerous drugs for the purpose of conducting research, including demonstrations or special projects, after receiving approval from the board.**

[02-15-96; 16.19.17.6 NMAC - Rn, 16 NMAC 19.17.6, 03-30-02; A, 09-15-06]

16.19.17.7 DEFINITIONS:

~~[A. Sympathomimetic means an agent that produces effects similar to those of impulses conveyed by adrenergic fibers of the sympathetic nervous system.]~~

A. "Board" means the New Mexico board of pharmacy.

B. "Dangerous Drug" as defined in the New Mexico Drug, Device and Cosmetic Act 26-1-2F.

(1) The following substance(s) has(have) been declared by the N.M. board of pharmacy as "Dangerous Drugs" in accordance with the Drug, Device and Cosmetic Act 26-1-18 NMSA and the Uniform Licensing Act (61-1-1 to 61-1-31 NMSA 1978). The board of pharmacy shall by regulation declare a substance a "dangerous drug" when necessary and notification shall be sent to all registered pharmacies in the state within sixty days of the adoption of the regulation. Ephedrine, USP, as ephedrine hydrochloride or ephedrine sulfate or as any other salt form. Any compound, mixture, or preparation containing one-half percent (0.5%) or less of ephedrine or of any salt form of ephedrine is exempt from the above. The following drug products containing ephedrine, USP, as ephedrine hydrochloride or ephedrine sulfate are exempted from this schedule: Bronkaid® Caplets and Primatene® Tablets. These products are exempt because they are approved for sale over the counter without a prescription under federal law, are labeled and marketed in a manner consistent with the pertinent OTC tentative final or final monograph, are manufactured and dis-

tributed for legitimate medical use in a manner that reduces or eliminates the likelihood for abuse, and are not marketed, advertised or labeled for an indication of stimulation, mental alertness, energy, weight loss, appetite control, or muscle enhancement.

(2) A dangerous drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug.

C. “Drug storage area” means the area restricted to the storage, dispensing and distribution of dangerous drugs.

D. “Research protocol” is the written documentation stating the objective, method, means of measurement, and utilization procedure of the dangerous drug.

[04-19-92; 16.19.17.7 NMAC - Rn, 16 NMAC 19.17.7, 03-30-02; A, 07-15-2004; A, 09-15-06]

16.19.17.8 RESEARCH LICENSING REQUIREMENTS:

A. Authorized persons to be licensed: public agencies, institutions of higher education and private organizations, or individuals for the purpose of conducting research, demonstration or special projects with the use of a dangerous drug.

B. The person applying for licensure must fill out a license for dangerous drug research application prior to purchasing any dangerous drug. The applicant must provide information pertinent to the research including:

(1) persons who will be involved in handling of dangerous drug:

(a) name, address, date of birth, and if they have been convicted of a felony;

(2) drug protocol:

(a) formulary of dangerous drugs for research;

(b) how will the dangerous drug be utilized;

(c) how much of the dangerous drug will be used for each administered dose or experiment;

(d) how much drug will be purchased annually.

(3) policy and procedure manual including:

(a) drug security: storage area, list of individuals with access to dangerous drugs;

(b) drug procurement: invoices, receipts, and drug sources;

(c) drug usage: records or logs for accountability;

(d) drug waste/destruction: memorandum report describing accountability;

(e) drug storage area;

(f) research protocol: propri-

etary or trade secrets are confidential and not subject to public disclosure:

(4) qualifications of the applicant to conduct such research with dangerous drugs which may include:

(a) degrees;

(b) higher education;

(c) specialized training.

C. The board will review all applicants for licensure for consistency with the public’s best interest.
[16.19.17.8 NMAC - N, 09-15-06]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

**TITLE 6 PRIMARY AND SECONDARY EDUCATION
CHAPTER 34 RURAL EDUCATION
PART 2 FLEXIBILITY FOR RURAL SCHOOL DISTRICTS**

6.34.2.1 ISSUING AGENCY:
Public Education Department
[6.34.2.1 NMAC - N, 08-31-06]

6.34.2.2 SCOPE: This rule applies to public schools and school districts.
[6.34.2.2 NMAC - N, 08-31-06]

6.34.2.3 STATUTORY AUTHORITY: This regulation is promulgated pursuant to Section 22-2-1 and 9-24-8 NMSA 1978.
[6.34.2.3 NMAC - N, 08-31-06]

6.34.2.4 DURATION:
Permanent
[6.34.2.4 NMAC - N, 08-31-06]

6.34.2.5 EFFECTIVE DATE:
August 31, 2006, unless a later date is cited at the end of a section.
[6.34.2.5 NMAC - N, 08-31-06]

6.34.2.6 OBJECTIVE: This rule establishes the general provisions and definitions applicable to rural education.
[6.34.2.6 NMAC - N, 08-31-06]

6.34.2.7 DEFINITIONS:
A. “Rural local educational agency (“rural LEA”)” means a local school district meeting the following criteria:

(1) the total number of students in average daily attendance at all schools served by the school district is fewer than 600, OR all schools in the district are located in counties with a population density of fewer than 10 persons per square mile; AND

(2) all schools served by the school district have a school locale code of 7 or 8 as determined by the secretary of the United States department of education in its small, rural school achievement eligibility spreadsheet for a given year.

B. “Small rural school achievement spreadsheet (“SRSA”)” means that spreadsheet developed by the United States department of education office of elementary and secondary education for a given fiscal year/school year delineating those New Mexico school districts as eligible for the SRSA program for that fiscal year.
[6.34.2.7 NMAC - N, 08-31-06]

6.34.2.8 FLEXIBILITY FOR RURAL SCHOOLS

A. Unless otherwise prohibited by federal law or regulation, school districts meeting the definition of rural LEA and currently employing teachers who teach multiple subjects but do not meet all the criteria for a highly qualified teacher in each of the core academic subjects they teach may have until the end of the 2006-2007 school year for these teachers to be highly qualified in each subject that they teach.

B. Newly hired teachers in school districts meeting the definition of rural LEA will have three years from the date of hire to become highly qualified in each core academic subject that they teach.

C. School districts using the flexibility described in subsections A and B of the section must:

(1) ensure that all teachers in core academic areas are highly qualified in at least one core academic subject they teach;

(2) provide high-quality professional development that increases the teachers’ content knowledge in the additional subjects they teach; and

(3) provide mentoring or a program of intensive supervision that consists of structured guidance and regular, ongoing support so that they become highly qualified in the additional core academic subject(s) they teach.
[6.34.2.8 NMAC - N, 08-31-06]

6.34.2.9 TECHNICAL ASSISTANCE

A. School districts not included in the annual SRSA listing may also be assisted through an application process to the rural education division of the public education department. Examples of assistance include:

(1) school/community revitalization program;

(2) filling teacher vacancies;

(3) interpretation of test results;

(4) advice on continuous improvement programs; and

(5) integrating distance education

programs.

B. The rural education division will develop an application for school districts to use in submitting requests for assistance. The application will address the following components:

- (1) percentage of students eligible for free and reduced price lunch;
- (2) percentage of minority enrollment;
- (3) migrant student population;
- (4) poverty rates;
- (5) accessibility to service centers;
- (6) administrator turnover;
- (7) ethnicity discrepancies between students and teachers and students and principals;
- (8) transportation costs; and
- (9) property wealth.

[6.34.2.9 NMAC - N, 08-31-06]

HISTORY OF 6.34.2 NMAC: [Reserved]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.19.6 NMAC, Sections 6, 7, 8, 9 and 10, effective 8/31/2006.

6.19.6.6 OBJECTIVE: This rule establishes requirements for:

A. supplemental educational services providers who seek to use incentives as a method of promoting selection of their services by parents of eligible children;

B. allowable rewards to students to reward attendance, continued participation and achievement related to the supplemental educational services;

C. establishing a timeline to be followed by supplemental educational services providers and all school districts and public schools, including charter schools for commencing and ending supplemental educational services during the school year[-];

D. establishing a sliding hourly fee schedule a provider may charge a school district based on the education level of the tutors being used by the supplemental educational services provider;

E. establishing the priority of students for whom supplemental educational services shall be provided;

F. implementation of basic program parameters and required assessments;

G. provision of on-site audits conducted by supplemental educational services providers, eligible school districts and the department;

H. establishing that all supplemental educational services providers and eligible school districts will submit all relevant student data; and

I. removal of providers from approved list.

[6.19.6.6 NMAC - N, 08/15/05; A, 08/31/06]

6.19.6.7 DEFINITIONS:

A. "Department" means the public education department.

B. "Eligible child or eligible children" means a child or children from low income families as determined by a school district, public school, or charter school for the purposes of allocating federal funds made available under Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) as amended.

C. "Incentives" means any goods, facilities, services, gifts, coupons, discounts, rebates, or cash offered or given to anyone by or on behalf of a supplemental educational services provider to promote selection of their services by parents or guardians of eligible children.

D. "Removal" means deleting the provider from the list of state-approved supplemental educational services providers.

~~D.~~ E. "Rewards" means an acceptable classroom incentive with no redeemable monetary value to an eligible child or that child's parent or guardian and that is offered to an eligible child only as a reward for attendance, continued participation, or achievement related to a provider's services.

~~E.~~ F. "Supplemental educational services" means tutoring and other supplemental academic enrichment services that are in addition to instruction provided during the school day and are of high quality, research-based, and specifically designed to increase the academic achievement of eligible children on required academic assessments and attain proficiency in meeting the state's academic achievement standards.

~~F.~~ G. "Timeline" means a schedule established by the department that delineates when parental notifications, are to be issued, when parent notifications are to be returned, when supplemental educational services may commence, and approximately how much supplemental educational service shall be completed prior to the state-mandated criterion referenced testing.

H. "Tutor to student ratio" means the established number of students a tutor may provide supplemental educational services to at one time.

[6.19.6.7 NMAC - N, 08/15/05; A, 08/31/06]

6.19.6.8 REQUIREMENTS:

A. All school districts, public schools, including charter schools and all state-approved supplemental educational services providers who offer or plan to offer supplemental educational services in New Mexico, shall adhere to timelines as follows:

(1) Parental notification shall occur two weeks after school has started.

(2) The enrollment period for supplemental educational services is at a minimum the four week period subsequent to the beginning of a school year after the issuance of notification to parents of the availability of supplemental educational services.

(3) Supplemental educational services shall begin no later than four weeks after the later of the following dates:

(a) the minimum enrollment period for supplemental educational services has ended, or

(b) the date the child has enrolled for supplemental educational services.

(4) Each supplemental educational services provider must complete at least seventy-five percent of services to eligible children for whom the parent/guardian has selected the supplemental educational service provider prior to the administration of the state-mandated criterion referenced testing. If an individual supplemental educational services provider, due to their own actions, does not complete seventy-five percent of services to all eligible children who are enrolled in supplemental educational services prior to the administration of the state-mandated criterion referenced testing, the local education agency administering supplemental educational services may take the following actions:

(a) immediately cancel existing contracts with each supplemental education services provider that has not met the requirement of this deadline;

(b) continue the existing contracts to ensure that all students enrolled in supplemental educational services continue to receive services; or

(c) renegotiate the existing contracts to ensure that all students enrolled in supplemental educational services continue to receive services.

(5) During the enrollment period the eligible school district must release names of students enrolled in supplemental educational services in a timely manner, at minimum a list of student names and contact information will be released to the providers on no less than a weekly basis.

B. ~~[Except for good cause shown in writing to the department, no]~~ With written approval from district superintendent, a school district, public school, including a charter school ~~[shall]~~ may enter into agreements or otherwise permit supple-

mental educational services providers to operate during the mandatory state-mandated criterion referenced testing.

C. Beginning with the 2005-2006 school year and continuing in every school year thereafter, supplemental educational services providers shall not directly or indirectly use incentives as a method of promoting selection of their services by parents or guardians of eligible children. Provided, however, that rewards may be offered to eligible children:

(1) to reward attendance, continued participation, or achievement related to a provider's services;

(2) if the reward has no redeemable monetary value to the eligible child or his parent/guardian and is otherwise consistent with accepted classroom incentives, such as pizza parties, ice cream parties, school supplies having nominal value, or the opportunity to order discounted instructional material for the eligible child's personal use; and

(3) parents or guardians of an eligible child or children consent to the offering of such incentives.

D. All school districts, public schools, including charter schools and all state-approved supplemental educational services providers who offer or plan to offer supplemental educational services in New Mexico, shall adhere to the following requirements:

(1) Each supplemental educational services provider must use a sliding hourly fee schedule when invoicing eligible school districts for services rendered. The sliding hourly fee schedule shall comport as follows:

(a) A supplemental educational services provider may charge the eligible school district its full hourly amount if the tutor has a valid teaching license or a four year degree or greater from an accredited university or college, and the per pupil cap will not be ratably reduced based on the education level of the tutor providing supplemental educational services.

(b) A supplemental educational services provider may charge the eligible school district eighty-five percent of its hourly amount if the tutor has less than a four year degree, but more than an associates of arts degree, or its equivalent of forty-eight (48) credit hours, from an accredited post secondary institution, and the per pupil cap will be ratably reduced by fifteen percent based on the education level of the tutor providing supplemental educational services.

(c) A supplemental educational services provider may charge the eligible school district seventy-five percent of its hourly amount if the tutor has less than an associates of arts degree, or its equivalent of forty-eight (48) credit hours, from an

accredited post secondary institution but more than a high school diploma, and the per pupil cap will be ratably reduced by twenty-five percent based on the education level of the tutor providing supplemental educational services.

(2) Eligible students are students from low-income families who attend Title I schools that are in their second year of school improvement, in corrective action, or in restructuring. Eligibility is not dependent on whether the student is a member of a subgroup that caused the school to not make AYP or whether the student is in a grade that takes the statewide assessments. If the funds available are insufficient to provide supplemental educational services to each eligible student whose parent requests those services, the LEA must give priority to providing services to the lowest-achieving eligible students. In this situation, the LEA shall use objective criteria to determine the lowest-achieving students.

(3) Supplemental educational services providers must use a department-approved pre- and post-assessment instrument to measure the gains that students achieve through supplemental educational services.

(4) Only Title I schools that have received a school designation of school improvement year 2, corrective action or restructuring are required to offer supplemental educational services.

E. Supplemental educational services providers must adhere to the following program parameters:

(1) Supplemental educational services providers must demonstrate the capacity to provide an adequate number of contact hours to contribute to student achievement within fair market value for the state approved providers.

(2) Invoices submitted by supplemental educational services providers must accurately reflect the tutor to student ratio of the tutoring session and the qualifications of the tutor providing services. The invoiceable tutor to student ratios shall comport as follows:

(a) A supplemental educational services provider that maintains a tutor: student ratio of one tutor to three students or less may charge the eligible school district the full hourly amount based on tutor qualifications.

(b) A supplemental educational services provider that maintains a tutor to student ratio of one tutor to four students, one tutor to five students, or one tutor to six students may charge the eligible school district eighty-five percent of its hourly amount based on tutor qualifications.

(c) A supplemental educational services provider that maintains a tutor to student ratio of one tutor to seven students or greater may only charge the eligible

school district fifty percent of its hourly amount based on tutor qualifications.

(3) The length of any supplemental educational services session must be developmentally appropriate considering the age of the student participating in supplemental educational services.

(4) Each supplemental educational services provider must ensure that the academic services provided to each student are consistent with the individual school district curriculum and state performance standards.

(5) Each student who is enrolled in supplemental educational services must have a student improvement plan, with goals relating to academic improvement based on state standards in place and approved by parents or guardians, appropriate school personnel and chosen supplemental educational services provider before any invoice for services rendered may be paid.

(6) Each student who is enrolled with an approved supplemental educational services provider must be pre-and post-tested, with a department-approved instrument. Students must be pre-tested in order to determine student achievement goals. Students must be post-tested when they have completed the program to document progress.

(7) Parents or guardians, and appropriate school personnel must be notified of student progress in a format that is easily understandable.

F. Supplemental educational services providers must conduct on-site audits of their services.

G. Eligible school districts must conduct on-site audits of supplemental educational services providers.

H. The department will conduct on-site audits of supplemental educational services providers and eligible school districts.

I. Each eligible school district and supplemental educational services provider will collect and submit all relevant student data to the department or its authorized contractor upon request.

J. Each eligible school district and supplemental educational services provider will attend all department sponsored meetings regarding the implementation and success of supplemental educational services.

K. All existing and interested supplemental educational services providers must submit an application to become a supplemental educational services provider for the 2006-07 school year. All successful applicants will apply every four years to continue to provide supplemental educational services. The application process will be held annually.

L. If a supplemental edu-

educational services provider is removed from the approved list, the supplemental educational services provider must wait a minimum of two years before they may reapply to become a supplemental educational services provider in the state of New Mexico. [6.19.6.8 NMAC - N, 08/15/05; A, 08/31/06]

6.19.6.9 UNFAIR PRACTICES: Supplemental educational services funds are funds that have been provided by grant to the department. The department disburses these funds to school districts and charter schools for purposes of reimbursing providers for services performed pursuant to professional services contracts entered into with providers. For purposes of performing supplemental educational services and as a condition of receipt of these public funds, it shall constitute an unfair practice for providers to offer or provide any incentive other than those allowed by this rule, to have school or school district administrators or charter school administrators work for or act on the behalf of any supplemental educational services provider, or to recruit in a way that is not in accordance with established guidelines and the policies of this rule.

A. School districts or charter school employees who learn that a supplemental educational services provider has offered to or actually provided an incentive other than those allowed by this rule, shall:

(1) promptly notify the provider in writing to cease and desist this practice immediately,

(2) promptly notify any parent or guardian that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian, and

(3) notify the department in writing if a provider fails or refuses to cease or desist in offering or providing non-allowed incentives.

B. The department upon receiving a written notification under this section or upon receiving a complaint from any other sources, may, after verifying such offering:

(1) notify the provider in writing to cease and desist this practice immediately because any incentive other than those allowed by this rule may not be offered by a provider nor accepted by the parent or guardian;

(2) notify parents or guardians that any incentive other than those allowed by this rule may not be offered by a provider and may not be accepted by the parent or guardian;

(3) notify appropriate authorities of suspected conduct that may constitute soliciting or receiving illegal kickbacks in

whole or in part with public money.

C. Beginning with the 2006-2007 school year, school district administrators or charter school administrators may not, under any circumstances, hold a position or work on behalf of any supplemental educational services provider.

D. Beginning with the 2006-2007 school year if a school district or charter school employee learns that a supplemental educational services provider is recruiting in a way that is not in accordance with established guidelines and the policies of this rule, that person shall:

(1) promptly notify the provider in writing to cease and desist this practice immediately; and

(2) notify the department in writing if a provider fails or refuses to cease or desist in recruiting non-eligible students for their program.

E. Eligible school district personnel may not show favoritism to any supplemental educational services provider and must provide parents with information about all state approved supplemental educational services providers serving the school district.

[6.19.6.9 NMAC - N, 08/15/05; A, 08/31/06]

6.19.6.10 REMOVAL OF PROVIDERS: Supplemental educational services providers must strictly adhere to their approved application and the policies of this rule. If any provider demonstrates a pervasive pattern of violating any aspect of their application or any part of this rule they will be removed from the state approved list of supplemental education services providers. Providers will be removed from the state approved list of supplemental educational services providers if there are any violations of test security of the New Mexico standards based assessment. In addition, providers will be removed for failing to contribute to the academic improvement of students as determined by the state evaluation. Each supplemental educational services provider that is to be removed may ask for an opportunity to clarify reasons for dismissal and request an appeal. [6.19.6.10 NMAC - N, 08/31/06]

NEW MEXICO PUBLIC REGULATION COMMISSION INSURANCE DIVISION

This is an amendment to the part name of 13.10.10 NMAC and Sections 6, 7, 9, and 11, effective August 31, 2006.

PART 10 [COMPREHENSIVE HEALTH] MEDICAL INSURANCE POOL PLAN OF OPERATION

13.10.10.6 OBJECTIVE: The purpose of this rule is to implement the [Comprehensive Health] Medical Insurance Pool Act, Chapter 59A, Article 54 NMSA 1978.

[11-30-98; 13.10.10.6 NMAC - Rn, 13 NMAC 10.10.6, 4-13-01; A, 8-31-06]

13.10.10.7 DEFINITIONS: In addition to the definitions in Section 59A-54-3 NMSA 1978, as used in this rule:

A. Act means the [Comprehensive Health] Medical Insurance Pool Act, Chapter 59A, Article 54 NMSA 1978.

B. plan or plan of operation means this rule.

[11-30-98; 13.10.10.7 NMAC - Rn, 13 NMAC 10.10.7, 4-13-01; A, 8-31-06]

13.10.10.9 BOARD OF DIRECTORS:

A. **Appointed members.** The superintendent shall announce his appointments to the board at the annual membership meeting.

B. **Elected members.**
(1) Prior to the annual membership meeting, the board or its nominating committee shall select a nominee to succeed each board director who was elected by the general membership of the pool and whose term is scheduled to expire on June 30 of that year. If applicable, such nominee will ensure the required representation as set forth in Subsection C of Section 59A-54-4 NMSA 1978. Such nominees shall be made known to the members of the pool at least 30 days prior to the annual membership meeting.

(2) The board shall compile a list of all members of the pool. At least 30 days prior to the annual membership meeting, a notice and proxy shall be sent to all members of the pool soliciting votes for membership on the board.

(3) At the annual membership meeting, the pool administrator shall tabulate the results and prepare a list of the nominees who have received the most votes for election to the board. Each pool member shall be entitled to cast one vote in electing a member to the board and shall be permitted to cast such vote in person or by proxy. The members shall be entitled to vote only for those nominees who would be a representative of its type of health insurer. For example, only non-profit health care plans would be eligible to vote in the election for the board director representing non-profit health care plans.

~~(4) The previously elected board of directors shall serve until their successors have been duly elected and qualified to serve.~~

C. **Succession.** The appointed members of the board of directors

shall serve until their successors have been duly appointed to serve. The previously elected members of the board of directors shall serve until the end of their term, until they resign, or until they are no longer eligible under the law to be a member of the board of directors, whichever occurs first. [11-30-98; 13.10.10.9 NMAC - Rn, 13 NMAC 10.10.9, 4-13-01; A, 8-31-06]

13.10.10.11 MEETING PROCEDURES:

A. Special meetings.

Special meetings of the board may be called by a majority of the directors or the chairman of the board, and will be held at the time and place fixed by the person calling the special meeting.

B. Notice. Written notice stating the time, place and, if a special meeting, the purpose, will be delivered either personally, by mail, or by telegram at the direction of the person calling the meeting, to each director at least 24 hours before the scheduled date of the meeting. If mailed or telegraphed, a notice is deemed delivered when deposited, postage or charges prepaid, with the transmitting agency, addressed to the director. The board may establish dates and times for regularly scheduled meetings.

C. Quorum. ~~[Six directors present]~~ A majority of the current members of the board in attendance either in person or by telephone will constitute a quorum at board meetings. The act of a majority of directors voting in person or by written proxy at a meeting at which a quorum is present will be the act of the board, except a two-thirds majority of the entire board is required for actions dealing with the levy of assessments, approval and discharge of the pool administrator, removal of officers, or for the pool to borrow money or to encumber assets of the pool. The directors may act only as a board with each director having one vote.

D. Proxy. A written proxy may be given only to other board members and shall be given to the chair at the time the vote is taken. No director shall be allowed to cast more than one proxy vote. Pool members selected may have alternates serve in their place but only if the alternate member was designated on the same basis as the original director. Any action required or permitted to be taken at a meeting of the directors may be taken without a meeting if a consent in writing setting forth the action so taken is signed by all of the directors.

E. Waiver of notice. Whenever any notice is required to be given to any director, a waiver thereof in writing signed by the person entitled to the notice is equivalent to the giving of timely notice. The attendance of a director at a meeting constitutes a waiver of notice of the meeting except when attendance is for the sole pur-

pose of objecting because the meeting is not lawfully called or convened.

F. Record of meetings. A written record of the proceedings of each board meeting shall be made. The original of this record shall be retained by the secretary of the board and a copy shall be forwarded to the superintendent. Copies shall be available upon request.

G. Participation methods. Members of the board, or any committee designated by the board, may participate in a meeting of the board, or of any committee, by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

H. Consent required for action without meeting. Any action required by the act or this plan to be taken at a meeting of the board, or any action which may be taken at a meeting of the board or of a committee of the board, may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors, or all of the members of the committee, as the case may be. The consent to action without a meeting shall have the same effect as a unanimous vote of the board or of the committee taking the action.

[11-30-98; 13.10.10.11 NMAC -Rn & A, 13 NMAC 10.10.11, 4-13-01; A, 8-31-06]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.7 NMAC, Sections 9 and 10, effective December 31, 2006.

11.4.7.9 PROCEDURES FOR ESTABLISHING THE MAXIMUM AMOUNT OF REIMBURSEMENT DUE

A. All hospitals shall be reimbursed at the hospital ratio itemized in the official WCA listing that becomes effective on December 31, ~~[2005, reflecting a 5% decrease from the temporary 2005 ratio]~~ 2006 for all services rendered from December 31, ~~[2005]~~ 2006, through December 31, ~~[2006]~~ 2007, except as provided in Subsection B of this temporary rule. Any new hospital shall be assigned a ratio of 67%.

(1) The assigned ratio is applied toward all charges for compensable services provided during a hospital inpatient stay, emergency department visit and outpatient hospital surgery.

(2) This ratio does not include

procedures that are performed in support of surgery, even if performed on the same day and at the same surgical site as the surgery.

(3) Appeal of assigned ratio by hospitals:

(a) A written appeal may be filed with the director within thirty (30) days of the assignment of the ratio. The administration will review the appeal and respond with a written determination. The administration may require the hospital to provide additional information prior to a determination.

(b) If the hospital is not satisfied with the administration's written determination, within ten (10) calendar days of the date of the determination, the hospital may request that a formal hearing be set and conducted by the director. The director's rulings in all such formal hearings shall be final.

B. The following services and items will be reimbursed as specified, commencing with services provided on or after 12:01 A.M. December 31, ~~[2005]~~ 2006:

(1) Implants and hardware implanted or installed during surgery in the setting of a hospital shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR.

(2) The professional and technical charges for radiology and pathology/laboratory services provided in a hospital shall be paid at rates equivalent to those set forth in the most current version of the MAP. The hospital shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

C. All hospitals shall provide to the WCA:

(1) the most recent full year filing of their HCFA/CMS 2552 G-2 worksheet prepared on behalf of the organization, by February 1, ~~[2006]~~ 2007;

(2) any hospital may specifically designate this worksheet as proprietary and confidential; any worksheet specifically designated as proprietary and confidential in good faith shall be deemed confidential pursuant to NMSA 1978, Section 52-5-21 and the rules promulgated pursuant to that provision.

(3) Failure to comply may result in fines and penalties.

D. All provisions of 11.4.7 NMAC contrary to the provisions set forth in this temporary rule are deemed void and inoperative during the effective period of this rule.

E. Method of payment for FASCs:

(1) All FASCs will provide global billing by CPT code on a CMS-1500 and

shall be paid by the assigned [MAP value times 1.5] centers for medicare and medicare services (CMS) ambulatory payment classification (APC) base payment rate times 1.3 effective for services from December 31, [2005] 2006, to December 31, [2006] 2007. [~~Multiple surgical procedures will be billed in accordance with Subparagraphs (a) and (b) of Paragraph (8) of Subsection G of 11.4.7.9 NMAC.~~] See <http://www.cms.hhs.gov/HospitalOutpatientPPS>, under Addendum B. No adjusted conversion factors or index values are to be applied. Payment will be made in accordance with the APC base payment rate assigned for that service in the quarter in which services were rendered. Absent an assigned APC base payment rate, services shall be paid BR.

(a) Bilateral procedure “-50”

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the APC base payment rate times 1.3.

(ii) The second procedure shall be coded with the same CPT code plus the “-50” modifier code and shall be paid at no more than 50% of the APC base payment rate times 1.3.

(b) Multiple procedures “-51”

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the APC base payment rate times 1.3.

(ii) The second and third procedure shall be coded with the respective CPT code plus the “-51” modifier code and shall be paid at 50% of the APC base payment rate times 1.3.

(iii) The fourth and subsequent procedures will be paid BR.

(2) Implants and hardware implanted or installed during surgery in the setting of a FASC shall be reimbursed at invoice cost times 1.25 plus shipping and handling for the implant or hardware and NMGR.

(3) The professional and technical charges for radiology and pathology/laboratory services provided in a FASC shall be paid at rates equivalent to those set forth in the most current version of the MAP. The FASC shall provide a detailed billing breakdown of the professional and technical components of the services provided, and shall be paid pursuant to the procedures set forth at Paragraph (7) of Subsection G of 11.4.7.9 NMAC of these rules.

F. Subsections A-E of 11.4.7.9 NMAC, inclusive, shall be repealed effective 11:59 P.M. December 31,

[2006] 2007, and shall be of no force or effect with respect to any services provided thereafter.

G. Maximum allowable payment method

(1) Basic provisions

(a) These rules apply to all charges for medical and other health care treatment provided on an outpatient basis, including procedures that are performed in support of ambulatory surgery, even on the same day and at the same site as the surgery.

(b) The MAP is procedure-specific and provider-neutral. Any code listed in the edition of the *Physicians Current Procedural Terminology* adopted in the director’s annual order may be used to designate the services rendered by any qualified practitioner within the parameters set by that practitioner’s licensing regulatory agencies combined with applicable state laws, rules, and regulations.

(c) For purposes of NMSA 1978, Section 52-4-5(A) (1990), the director shall issue an order not less than once per annum setting the schedule of maximum allowable payments for medical services. The order shall contain the revised fee schedule, a brief description of the technique used for derivation of the fee schedule and a reasonable identification of the data upon which the fee schedule was based. The fee schedule shall be released to the public not less than 30 days prior to the date upon which it is adopted and public comments will be accepted during the 30 days immediately following release. After consideration of the public comments the director shall issue a final order adopting a fee schedule, which shall state the date upon which it is effective. The final fee schedule order shall be available at the WCA clerk’s office not less than ten days prior to its effective date.

(2) Evaluation and management (E/M) services:

(a) The definition for “new patient” is unique to New Mexico, differing from the definition presented in the *Physicians’ Current Procedural Terminology*. (See Subsection EE of 11.4.7.7 NMAC)

(b) E/M CPT codes shall not be pro-rated.

(3) Independent medical examinations

(a) All IMEs and their fees must be authorized by the claims payer prior to the IME scheduling and service, regardless of which party initiates the request for an IME. In the event of an IME ordered by a judge, the judge will set the fee.

(b) In the event a worker fails to provide 48 hours’ notice of cancellation of an IME appointment, the HCP may be reimbursed either 60% of the pre-approved fee or up to 60% of the HCP’s usual and cus-

tomary fee if a fee was not pre-approved. “Missed IME” should be written next to the code.

(4) Physical impairment ratings

(a) All PIRs and their fees shall be authorized by the claims payer prior to their scheduling and performance regardless of which party initiated the request for a PIR. The PIR is inclusive of any evaluation and management code.

(b) Impairment ratings performed for primary and secondary mental impairments shall be billed using CPT code 90899 (unlisted psychiatric service/procedure) and shall conform to the guidelines, whenever possible, presented in the most recent edition of the AMA Guides to the Evaluation of Permanent Impairment.

(c) A PIR is frequently performed as an inherent component of an IME. Whenever this occurs, the PIR may not be unbundled from the IME. The HCP may only bill for the IME at the appropriate level.

(d) In the event that a PIR with a specific HCP is ordered by a judge and the HCP and claims payer are unable to agree on a fee for the PIR, the judge may set the fee or take other action to resolve the fee dispute.

(5) Physical medicine and rehabilitation services

(a) It shall be the responsibility of the physical medicine/rehabilitation provider to notify the claims payer of a referral prior to commencing treatment.

(b) The appropriate CPT code must be used for billing by practitioners.

(c) Services provided by caregivers (e.g., technicians, exercise physiologists) must be pre-authorized and paid pursuant to Paragraph (13) of Subsection G of 11.4.7.9 NMAC.

(d) In the event a worker fails to provide 48 hours notice of cancellation of an FCE appointment, the practitioner may be reimbursed up to 60% of the MAP for a four-hour appointment.

(6) Materials supplied under CPT code 99070

(a) Supplies and materials must be itemized.

(b) Supplies and materials are reimbursed at the practitioner’s invoice cost plus 25%, plus tax, shipping and handling charges.

(c) A copy of the invoice shall be provided either at the time of billing or upon the payer’s request.

(7) Service component modifiers — radiology and pathology/laboratory

(a) Use of the technical and professional component modifier codes is required for the billing of all radiology and pathology/laboratory procedures. The CPT code followed by “TC” is the appropriate

billing code for the technical component.

(b) The dollar value listed as the MAP for a specific radiology or pathology/laboratory procedure represents the combined maximum allowable payment for both the technical and professional components of that procedure:

(i) The entity billing for the technical component shall be paid at no more than 60% of the MAP for the procedure when the service is provided on an inpatient or outpatient basis.

(ii) The entity billing for the professional component shall be paid at no more than 40% of the MAP for the billed procedure, whether the service was provided on an inpatient or an outpatient basis.

(8) Surgical modifiers

(a) Bilateral procedure “-50”

(i) When performed during the same operative session, the first or major procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of billed charges or the-MAP.

(ii) The second procedure shall be coded with the same CPT code plus the “-50” modifier code and shall be paid at no more than 50% of the MAP.

(b) Multiple procedures “-51”

(i) The primary or major surgical procedure shall be coded with the appropriate CPT code without a modifier and shall be paid at the lesser of the billed charges or the MAP.

(ii) The second and third procedure shall be coded with the respective CPT code plus the “-51” modifier code and shall be paid at 50% of the MAP.

(iii) The fourth and subsequent procedures will be paid BR.

(c) Assistant surgeon “-80”

(i) The attending surgeon shall bill using the appropriate CPT code(s) and modifiers, if applicable, for the procedure(s) performed and shall be paid at the lesser of the billed charges or the MAP, subject to the percentages for modifiers in this section.

(ii) The assistant surgeon shall bill using the appropriate CPT codes(s) plus the modifier for the procedures performed and shall be paid at no more than 25% of the MAP.

(9) Unlisted services or procedures are billable and payable on a BR basis.

(10) Performance of BR services.

(a) The fee for the performance of any BR service is negotiated between the practitioner and the payer prior to delivery of the service. Payers should ensure that a CPT code with an established MAP is not available.

(b) Performance of any BR serv-

ice requires that the practitioner submit a written report with the billing to the payer.

(i) The report shall substantiate the rationale for not using an established CPT code.

(ii) The report shall include pertinent information regarding the nature, extent, and special circumstances requiring the performance of that service and an explanation of the time, effort, personnel, and equipment necessary to provide the service.

(iii) Information provided in the medical record(s) may be submitted in lieu of a separate report if that information satisfies the requirements of Paragraph (1) of Subsection D of 11.4.7.10 NMAC.

(iv) No separate charge is allowed for the report.

(v) In the event a dispute arises regarding the reasonableness of the fee for a BR service, the practitioner shall make a prima facie showing that the fee is reasonable. In that event, the burden of proof shall shift to the payer to show why the proposed fee is not reasonable.

(vi) Any disputes shall be submitted pursuant to Section 13 of this rule.

(11) Special reports shall be billed with CPT code “99080” and the descriptor “special report”. The form letter to health care provider is a special report. The MAP is \$45.

(12) The use of global fees is encouraged, however global fee shall not be used unless payer and provider agree. Agreement for use of a global fee may be sought and obtained before, during or after provision of services. All services not covered by the global fee shall be coded and paid separately, to the extent substantiated by medical records. Agreement to use a global fee creates a presumption that the HCP will be allowed to continue care throughout the global fee period.

(13) Caregiver services are subject to the payer’s pre-authorization prior to the scheduling and performance of any service. All services provided by caregivers are paid BR.

(14) Durable medical equipment (DME) shall be pre-authorized by the payer. However, reasonable and necessary prosthetic/orthotics training and/or adjusting is excluded from the cost of the DME and may be billed separately.

(a) Rental of DME shall not exceed 90 days unless it is determined by the payer to be more cost efficient to do so.

(b) Rental fees shall not exceed the cost of purchase established in the Subparagraph, below. Rental fees paid for the first 30 days of rent may be applied against the purchase price. Subsequent rental fees may not be applied against the

purchase price. The decision to purchase should be made within the first 30 days of rental.

(c) Purchases of DME are paid at the practitioner’s invoice cost plus 25% plus taxes, shipping and handling charges.

(d) A copy of the invoice shall be provided either at the time of billing or upon the payer’s request.

(15) Prorating

(a) The prorating of the practitioner’s fees for time spent providing a service, as documented in the provider’s treatment notes, is not prohibited by these rules; provided however, that EOB — 13 is sent to the practitioner. (See item (iii) of Subparagraph (e) of Paragraph (4) of Subsection C of 11.4.7.11 NMAC).

(b) The practitioner’s fees should not be prorated to exclude time spent in pre- and post-treatment activity, such as equipment setup, cleaning, disassembly, etc., if it is directly incidental to the treatment provided and is adequately documented.

(16) Referrals

(a) If a referral is made within the initial sixty (60) day care period as identified by NMSA 1978, Section 52-1-49(B), the period is not enlarged by the referral.

(i) When referring the care of a patient to another provider, the referring provider shall submit complete medical records for that patient, upon request of the referral provider, at no charge to the patient, referral provider or payer.

(ii) When transferring the care of a patient to another provider, the transferring provider shall submit complete medical records for that patient to the subsequent provider at no charge to the patient, subsequent provider or payer.

(b) If, subsequent to the completion of a consultation, a referral is made to the consultant for the assumption of responsibility for the management of a portion or all of the patient’s condition(s), the following procedures apply:

(i) Follow up consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) Only established patient codes shall be used.

(c) If a practitioner who has been requested to examine a patient assumes responsibility immediately for primary provision of the patient’s care, it shall be considered a referral and not a consultation.

(i) Consultation codes shall not be used.

(ii) Evaluation and management codes shall be used.

(iii) For the first visit only, a new patient code may be used.

(iv) HCPs and caregivers may negotiate with the payer, prior to performing the service, regarding the use of

consultation codes in appropriate circumstances.

(17) Physical therapy

(a) New Mexico specific codes are no longer in use. Please consult the fee schedule currently in use for specific codes. Evaluation and management codes are not appropriate for this purpose.

(b) Physical therapy bills may include all codes which are reasonable and necessary for the evaluation and treatment of a worker in a single day.

(c) An initial failed appointment, without providing 48 hours' notice to the physical therapist, may be billed at 60% of the MAP.

(18) Failed appointments

(a) An initial failed appointment, when the new patient fails to provide 48 hours notice to the HCP, may be billed at the level of a new outpatient/expanded problem focused H&E/low to moderate severity/straightforward medical decision making/evaluation and management service, using CPT code 99202 and annotated as "FAILED INITIAL APPOINTMENT/NEW PATIENT"

(b) A failed appointment by an established patient may not be billed.

(19) Facility fees

(a) Charges for the use of a room for other than an emergency room visit or operating and recovery rooms for inpatient or outpatient hospital surgery are prohibited by these rules.

(b) For instances of outpatient services, where two or more HCPs combine in delivery of the service, the maximum total payment is based on the MAP for the specific service. The HCPs may allocate the payment among themselves.

(20) Charges for copies of radiographic film (X-rays) may be billed to the requestor by the X-ray facility following by report (BR) procedures.

(21) Second medical opinions requested by a party are deemed medically reasonable and necessary for payment purposes.

H. Pharmacy maximum allowable payment (Pharm MAP) is based upon the maximum payment that a pharmacy or authorized HCP is allowed to receive for any prescription drug, not including NMGR.

(1) Basic provisions

(a) Pharmacies and authorized HCPs must include patient identification and information. No specific form is required.

(i) Pharmacies shall not dispense more than a 30-day supply of medication unless authorized by the payer.

(ii) Only generic equivalent medications shall be dispensed unless a generic does not exist and unless specifi-

cally ordered by the HCP.

(iii) Compounded medication prepared by pharmacists shall be paid on a by report (BR) basis.

(b) Any medications dispensed and administered in excess of a 24-hour supply to a registered emergency room patient shall be paid according to the MAP.

(c) [Any nationally recognized publication, issued not less frequently than monthly, which lists the AWP, may be used to determine the AWP.] Health care provider dispensed medications shall not exceed a 10 day supply for new prescriptions only. The payment for health care provider dispensed medications shall not exceed the cost of a generic equivalent.

(d) Any bill that is submitted without an NDC number will be paid at the lowest AWP available for the month in which the drugs were dispensed.

(e) [No more than a 30 day supply of medication shall be dispensed, unless authorized by the payer. Where possible, a generic equivalent shall be prescribed over brand name medication, unless specifically ordered by an HCP.] The HCP formula for billing generic and brand name prescription drugs is:

(\$)AWP x .90 with no dispensing fee included.

(2) Average wholesale price (AWP)

(a) Any nationally recognized monthly or weekly publication that lists the AWP may be used to determine the AWP.

~~**(b)**~~ **(b)** The date that shall be used to determine the AWP and calculation of the Pharm MAP shall be the date on which the drugs were dispensed, regardless of AWP changes during the month.

~~**(c)**~~ **(c)** Use of a prorated calculation of AWP will often be necessary in the formulas. For each drug dispensed, the prorated AWP shall be based on the AWP for the "100s ea" quantity of the specific strength of the drug, as listed in a nationally recognized publication, with the following exceptions:

(i) If an AWP listed in the publication is based on the exact quantity of the drug dispensed, e.g., #15, #60, 15 ml, 3.5 gm, etc., the AWP for the exact quantity shall be used with no prorating calculation made.

(ii) If the drug is dispensed as a quantity based on volume (grams, ounces, milliliters, etc.) rather than single units ("ea"), the prorated AWP shall be calculated in accordance with the highest quantity (volume) listed for the specific strength of drug.

(iii) Subject to items (i) and (ii) of Subparagraph (b) of Paragraph (2) of Subsection C of 11.4.7.9 NMAC, in cases of a conflict between referenced pub-

lications, the lower price shall prevail.

(3) [Formulas

~~**(a) The formula for billing of brand name prescription drugs is: Pharm MAP(\$)=(\$)AWP x 1.04 + \$6.50.**~~

~~**(b) The formula for billing of generic prescription drugs is: Pharm MAP(\$)=(\$)AWP x 1.04 + \$8.06.] The formula for billing generic and brand name prescription drugs is:**~~

Pharm MAP(\$)=(\$)AWP x .90 + \$5.00.

I. Qualification of out of state health care providers

(1) An HCP that is not licensed in the state of New Mexico must be approved by the director to qualify as an HCP under the act.

(2) No party shall have recourse to the billing and payment dispute resolution provisions of these rules with respect to the services of an HCP who is not licensed in New Mexico or approved by the director.

(3) The director's approval may be obtained by submitting a written motion and order, supported by an original affidavit of the HCP seeking approval, on forms acceptable to the director. Nothing in this rule shall prevent the director from entering into agreements with any party or HCP to provide for simplified and expeditious qualification of HCPs in individual cases, provided, however, that all such agreements shall be considered public records.

(4) The director's approval of a health care provider in a particular case, pursuant to the provisions of Section 52-4-1, will be deemed given when an out of state health care provider provides services to that injured worker and the employer/insurer pays for those services. The approval obtained by this method will not apply to the provision of health care by that provider to any other worker, except by obtaining separate approval as provided in these rules. [01-24-91, 4-1-91, 12-30-91, 12-31-91, 1-18-92, 10-30-92, 1-15-93, 10-28-93, 2-23-94, 3-14-94, 12-2-94, 1-31-95, 8-1-96, 9-1-96, 8-15-97, 4-30-98, 10-01-98, 6-30-99; 11.4.7.9 NMAC - Rn & A, 11.4.7.9 NMAC, 8-07-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06]

11.4.7.10 BILLING PROVISIONS AND PROCEDURES

A. Basic provisions

(1) Balance billing is prohibited.

(2) Unbundling is prohibited.

(a) If a service that is ordinarily a component of a larger service is performed alone for a specific purpose it may be considered a separate procedure for coding, billing, and payment purposes.

(b) Documentation in the medical records must justify the reasonableness and necessity for providing such services alone.

(3) The patient/worker shall not be billed for health care services provided by an authorized HCP as treatment for a valid workers' compensation claim except as provided in Subparagraphs (a) or (b) of Paragraph (2) of Subsection A of 11.4.7.13 NMAC.

(4) All reasonable and necessary services provided to a patient/worker with a valid workers' compensation claim shall be paid by the employer or the employer's representative on behalf of the employer.

(5) If a service has been pre-authorized or is provided pursuant to a treatment plan that has been pre-authorized by an agent of the payer, it shall be rebuttably presumed that the service provided was reasonable and necessary. The presumption may be overcome by competent evidence that the payer, in the exercise of due diligence, did not know that the compensability of the claim was in doubt at the time that the authorization was given.

(6) Timeliness

(a) Initial billing of outpatient services by practitioners, other than hospitals and FASC's, shall be postmarked no later than 30 calendar days from the date of service.

(b) Initial billing of outpatient services by hospitals and FASCs shall be postmarked within 30 days from the end of the month in which services were rendered.

(c) Initial billing of inpatient services shall be issued no later than 60 calendar days from the date of discharge.

(d) Failure of the practitioner to submit the initial billing within the time limits provided by these rules shall constitute a violation of these rules but does not absolve the employer of financial responsibility for the bill.

B. Billing forms have been adopted from the US department of health and human services' health care financing administration.

(1) Billing for services calculated according to the ratio discount method must be on a UB-92 CMS-1450. This includes inpatient services, ~~and~~ emergency room services and hospital outpatient surgery.

(2) Billing for services calculated according to the MAP and provided by hospitals ~~and FASCs~~ may be on form UB-92, CMS-1450 or form CMS-1500. FASCs shall bill for services on a CMS-1500.

(3) Billings for all outpatient services calculated according to the MAP must be on form CMS-1500.

(4) Pharmacies and authorized HCPs must include patient identification and appropriate information. Billings for pharmaceuticals requires no specific form.

(5) Completion of forms

(a) "WORKERS' COMPENSATION" or "WORK COMP" shall be clearly printed or stamped at the top of the billing

form. Any subsequent billing for the same service(s) must be clearly labeled "TRACER" or "TRACER BILL" at the top of the billing form and may be a copy of the original bill.

(b) Entry of the applicable CPT code and a descriptor are mandatory for each procedure billed, regardless of which form or itemized statement is utilized.

(c) FORM CMS-1500 (12/90) information required for completion is self-explanatory with the following exceptions:

(i) Sections 6, 9, 11a-d, 12, 13, 17a, 19, 22, 23, 24h-k, and 27 are not applicable.

(ii) Section 1. Check "Other".

(iii) Section 1a. Enter patient's social security number.

(iv) Section 4. Enter employer's name.

(v) Section 7. Enter employer's address and telephone number.

(vi) Section 11. Name of workers' compensation insurance carrier or self-insured employer or third party administrator.

(vii) Section 21. Enter ICD-9-CM or DSM code and descriptor for each diagnosis.

(viii) Section 24d. Entry of a specific CPT code, any applicable modifier and the descriptor is mandatory for each procedure/service billed.

(ix) Section 26. Optional

(x) Section 28. Multiple page bills should show the cumulative total in Section 28 of each consecutively numbered page, with the combined total for all pages on the last page.

(xi) Section 29. This section may be used to indicate any agreed upon discount amount or rate.

(xii) Section 30. This section may be used to indicate the amount due after applying any discounts. Otherwise, leave it blank.

(xiii) Anesthesiologists and laboratories may omit Sections 14, 15, and 16.

(d) Form CMS-1450 (UB-92) must be completed by health care facilities:

(i) Locators that are optional on the UB-92 are 8, 9, 10, 11, 31, 33, 34, 35, 36, 37, 38, 48, 49, 51, 52, 53, 54, 55, 57, 59, 64, 79, and 84.

(ii) The following locators on the UB-92 must be completed by the health care facilities: 1, 2, 3, 4, 5, 6, 7, 12, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24-30, 32, 42, 43, 44, 47, 50, 56, 58, 60, 65, 67, 76, 78, 80.

(iii) Locator 1. Practitioner name, address, and telephone number.

(iv) Locator 2. Site of

service - name and address.

(v) Locator 3. Account number or invoice number.

(vi) Locator 4. Enter Code 111, 115, 117, 121, 125, 127, 851, 855, or 857 for inpatient; 131, 135, 137 for outpatient and for emergency room; 831 for FASC. (Note: if Locator 42 contains an entry beginning with "45", then the service was emergency room, not outpatient.)

(vii) Locator 5. Hospital federal tax identification number.

(viii) Locator 6. Statement coverage dates must be provided.

(ix) Locator 7. Covered days - the days during the billing period applicable to the cost report.

(x) Locator 12. Injured worker's name.

(xi) Locator 14. Injured worker's birth date.

(xii) Locator 17. Date of admission to hospital or facility.

(xiii) Locator 19. Type of admission., code values: 1 = emergency, 2 = urgent, 3 = elective, 5 = trauma center, 9 = information unavailable.

(xiv) Locator 20. Source of admission code values: 1 = physician referral, 2 = clinic referral, 3 = HMO referral, 4 = hospital transfer, 6 = transfer from HCF, 7 = ER, 8 = law enforcement, 9 = unavailable, A = transfer from (CAH).

(xv) Locator 22. Patient status: code values (01-76).

(xvi) Locator 23. Health care provider medical record number.

(xvii) Locators 24-30. Use condition code 02 for employment related injury.

(xviii) Locator 42. Revenue codes for services billed. (Note: revenue code (0001) must be provided in column 42 for total charges.)

(xix) Locator 43. Lists and describes each medical service and item being billed corresponding to revenue code applicable.

(xx) Locator 44. Accommodation rate for applicable services provided.

(xxi) Locator 47. Billed charges. Information based on service provided (revenue code). (note: last revenue code in column 42 must be 0001 for non-electronic filers.)

(xxii) Locator 50. Insurance carrier, self-insurer or TPA (claims administrator).

(xxiii) Locator 56. DRG (diagnosis related group). Code used by Medicare to group medical services provided by inpatient hospital services. Required for type of bill = 111, 115, 117, 121, 125, 127, or inpatient for CAH codes 851, 855 and 857.

(xxiv) Locator 58. Insured's name - patient's name or employer's name.

(xxv) Locator 60. SSN of injured worker or worker's identification number.

(xxvi) Locator 65. Employer's Name.

(xxvii) Locator 67. Principle diagnosis code must be based on ICD-9-CM. Code must include all five digits.

(xxviii) Locator 68-75. Other diagnosis codes are based on ICD-9-CM. These codes are sent to payer if available.

(xxix) Locator 78. The health care facilities current workers' compensation ratio.

(xxx) Locator 80. Principle procedure code and date: The HCP enters the ICD-9-CM code for the inpatient principle procedure. The principle procedure is the procedure performed for definitive treatment rather than for diagnostic or exploratory purposes, which is necessary to take care of a complication. The code should relate closely to the principle diagnosis. A date should also be provided.

(6) The health care facility is required to submit all requested data to the payer. Failure to do so could result in fines and penalties imposed by the WCA. All payers are required to notify the economic research bureau of unreported data fields within 10 days of payment of any inpatient bill.

C. New Mexico gross receipts tax (NMGR): Practitioners whose corporate tax status requires them to pay NMGR shall bill for NMGR in one of the following ways:

(1) Indicate via a printed or stamped statement adjacent to the combined "total charges" that the individual charges and total charges include NMGR at the specific percentage applicable to the practitioner.

(2) Make no mention of NMGR, in which case the bill shall be paid at the lesser of the MAP or the billed amount.

(3) Itemize the actual amount of the NMGR below the combined "total charges" amount for all billed services and items, indicating the specific tax rate (percent) applicable to the municipality or county location of the practitioner; and, add this amount to the combined "total charges" to derive a "total amount billed".

D. Medical records

(1) Initial bills for every visit shall be accompanied by appropriate office notes (medical records) which clearly substantiate the service(s) being billed and are legible.

(2) No charge shall be made to any party to the claim for the initial copy of

required information. Second copies provided shall be charged and paid pursuant to Subsection A of 11.4.7.15 NMAC.

(3) A charge may be made to the requesting party to the claim for second and subsequent copies of any medical records.

(4) No charge shall be made for provision of medical records to the WCA's utilization review/case management/peer review contractor for required information.

(5) Records for hospitals and FASCs shall have a copy of the admission history and physical examination report and discharge summary, hospital emergency department medical records, ambulatory surgical center medical records or outpatient surgery records.

[4-1-91, 12-31-91, 11-18-92, 1-15-93, 10-28-93, 3-14-94, 12-2-94, 11-18-94, 12-31-94, 8-1-96, 10-01-98; 11.4.7.10 NMAC - Rn, 11 NMAC 4.7.10, 8-30-02; A, 10-25-02; A, 1-14-04; A, 1-14-05; A, 12-30-05; A, 12-31-06]

End of Adopted Rules Section

This page intentionally left blank.

Other Material Related to Administrative Law

NEW MEXICO LIVESTOCK BOARD

NEW MEXICO LIVESTOCK BOARD

NOTICE OF REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a regular board meeting will be held on Thursday, September 14, 2006, at the New Mexico Livestock Board, 300 San Mateo Blvd. NE, Suite 1000, Albuquerque, New Mexico, at 9:00 a.m. The Board will discuss matters of general business.

Copies of the agenda can be obtained by contacting Daniel Manzanares, Executive Director, New Mexico Livestock Board, 300 San Mateo Blvd. NE, Suite 1000, Albuquerque, NM 87108-1500, (505) 841-6161.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment on Changes to Part 7

The proposed amendments to Part 7 of the WCA Rules were opened for public comment on July 5, 2006, and through July 28, 2006, for written comment. Several in-person and written comments were received from the public at the rules hearing and in writing after the hearing.

One commenter proposed that a 10% reduction in the hospital ratio would be more consistent with market rates and further that keeping 2006 ratios in effect for 2007 will result in increasing insurance rates because hospitals can increase their charges. It further stated that a reduction in the hospital ratio is necessary or it could adversely affect rate reductions filed with the Department of Insurance. In the Rules Governing Payment for Health Care Services effective 1/14/05 all hospital ratios were reduced 20%. Additionally, there were changes in payment for implants, radiology and laboratory which further reduced previous payment standards. In the rules effective 12/30/05 the hospital ratios were further reduced an additional 5%. At this time, the WCA is studying the impact of these changes on the entire workers' compensation community.

One commenter addressed the question of a conflict with rule 11.4.7.7D. Proposed rule 11.4.7.9H(1)(a)iii is deleted.

Twenty-five commenters addressed draft rule 11.4.7.9E(1) requesting Freestanding Ambulatory Surgical Center (FASC) reimbursement be changed to Ambulatory Payment Classification (APC) 1.6. Commenters objected that payment levels are too low and that ASCs are taking the largest reduction in the system. The commenters and speakers recommend that the Task Force recommendation of 160% of Medicare be implemented and one commenter suggested that it be implemented by September 1, 2006. The Task Force proposal for capping hospital fees was not addressed in rule. The commenters asserted that ASCs are more cost effective and efficient, particularly since hospitals charge more than ASCs, and that the WCA should reimburse hospital outpatient surgery centers and ASCs the same. A speaker at the hearing stated that the economics of outlying areas are different than in Albuquerque and that some accommodation should be made. Several responders commented that the ASCs may have to discontinue their participation in the workers' compensation system. Comments were also received supporting the rule recommendation for implants and for an APC based payment system.

Based on data submitted, the WCA position is that APC 1.6 would be an unacceptable increase of 31% over current MAP x 1.5 whereas the proposed reimbursement of APC 1.3 is a 7% increase. Research of payments to FASCs in border states shows that the Texas method of reimbursement by Grouper rate x 213.3% is less than the New Mexico proposed APC 1.3. Arizona has no fee schedule for FASCs while Oklahoma pays at APC 1.5. The Colorado reimbursement is based on their own calculated fee schedule. The WCA recognizes that reimbursement to FASCs at the current CMS authorized Grouper rate is inadequate for the efficient and rapid delivery of health care services they offer and has chosen to increase their reimbursement to APC which is the higher rate paid to hospitals for the same service.

Varying comments were received pertaining to 11.4.7.9H(1)(c). Commenters responding to 11.4.7.9H stated that there was no need for dispensing large quantities of pain medications over a long period of time but that it is vital to dispense antibiotics for at least 10 days and that 7 days is not adequate. Another commenter stated that medications are prepackaged in 10 day supplies and that antibiotics in particular should not

be divided. One commenter proposed that 30 days be allowed while another believed a 4 day limit should apply. One commenter asserted that sometimes the brand name is cheaper than a generic and that occasionally a generic drug may not be as effective as a brand name. The commenter also suggested that the HCP should determine the drug administered. The WCA believes that 10 days is a sufficient amount of time for the HCP to address the efficacy of any new medication and the rule will be changed to reflect a 10 day limit.

Comments received in response to 11.4.7.9H(3) suggest that the proposed draft rule is too steep and the dispensing fee is inadequate. One commenter asserted that doctors should be given a reasonable dispensing fee for assuming the risk of dispensing medications. Other comments stated that workers' compensation pharmacy and the associated billing system is more work intensive than other claims and that the dispensing fee should be increased since reduced payment could have an adverse impact on access to care by workers. Another responder suggested decreasing the draft .90 of AWP to .71 with a \$3.00 dispensing fee to replace the \$5.00 dispensing fee in the draft rules and agreed that the pharmaceutical reimbursement change is in line with other states' reimbursements. Other commenters supported compounded medications. Research conducted by the WCA of other states shows the lowest reimbursement percentage of AWP to be .88 with an \$8.70 dispensing fee.

One responder addressed existing rule 11.4.7.9H(2)(a) suggesting a rephrasing to read: "Any nationally recognized monthly or weekly publication that lists the AWP may be used to determine the AWP." The suggested rephrasing appears more fluid and will be adopted in the new publication of the rules.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

Alan M. Varela
Director
N.M. Workers' Compensation
Administration
August 15, 2006

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2006

Volume XVII	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 17
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 3	April 14
Issue Number 8	April 17	April 28
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 3	July 17
Issue Number 14	July 18	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 18	September 29
Issue Number 19	October 2	October 16
Issue Number 20	October 17	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 29

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.