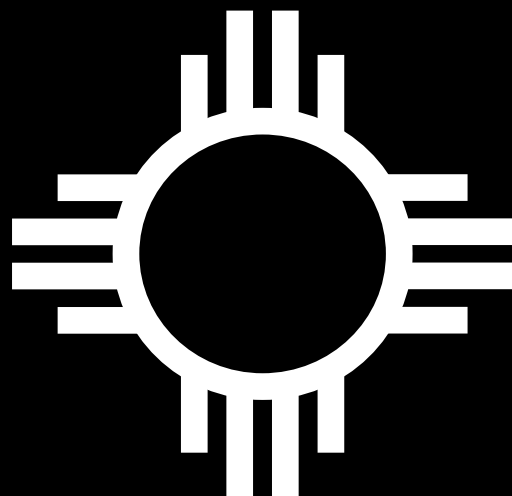


# **NEW MEXICO REGISTER**

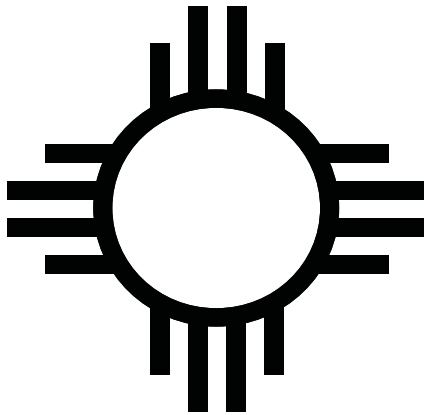


Volume XXI  
Issue Number 1  
January 15, 2010



# **New Mexico Register**

**Volume XXI, Issue Number 1**  
**January 15, 2010**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2010

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# New Mexico Register

Volume XXI, Number 1

January 15, 2010

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#### Effective Date and Validity of Rule Filings

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

*A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

#### RULE HEARING & BOARD MEETING NOTICE:

Notice is hereby given that the New Mexico Board of Barbers and Cosmetologists will convene a Rule Hearing on **Friday, February 26, 2010 at 9:00 am** to amend, replace and repeal:

Title 16, Chapter 34, 16.34.4.11 Special Licenses-Identification Licenses; 16.34.4.13 Special Licenses-Qualified Instructors; 16.34.4.14 Special Licenses-Student Permits; 16.34.6.8 Licensing By Reciprocity: Credit for Out-of-State Training; 16.34.14.8 Fees; 16.34.15.8 Administrative Fees and Penalties and Fines;

Title 16, Chapter 36, 16.36.2.11 Licensure Requirements-Application for Body Art Establishment License; 16.36.2.14 Licensure Requirements-Tattoo or Body Piercing-Scarification Apprenticeship Training and Examination Requirements; 16.36.2.15 Licensure Requirements-Apprentice Sponsor; 16.36.2.16 Licensure Requirements-Permanent Cosmetic Training and Examination Requirements; 16.36.4.8 Enforcement, Complaints and Disciplinary Action;

The hearing will be held at the **Regulation & Licensing Department Real Estate Conference room 5200 Oakland NE, Albuquerque N.M. 87113**. Immediately following the Rule Hearing, the New Mexico Board of Barbers and Cosmetologists will convene a regular meeting.

Copies of the proposed rules are available on the Board of Barbers and Cosmetologists Website: [www.RLD.state.nm.us/barberscosmetologists](http://www.RLD.state.nm.us/barberscosmetologists) or by sending a request to the Board Office, P.O. Box 25101 Santa Fe, NM 87504-5101, or by phone (505) 476-4690. Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by February 5, 2010 to allow time for distribution to the Board and Commissions members. Individuals planning on testifying at the hearing must provide 5 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the Board meeting may be closed to the public while the Board is in Executive

Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board Office.

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

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

#### CHILDREN, YOUTH AND FAMILIES DEPARTMENT NOTICE OF PUBLIC HEARING

The Children, Youth and Families Department, Youth and Family Services will hold a formal public hearing on **Thursday, February 25<sup>th</sup>, 2010, 9:00 a.m. to 11:00 am** in the PERA Building, Room 565 on the 1120 Paseo de Peralta, Santa Fe, New Mexico. The Public Hearing is to receive public comments regarding proposed regulations 8.14.10 NMAC for Juvenile Justice Transition Services.

The proposed regulations may be obtained by contacting Ken Warner at 505-827-3955. Interested persons may testify at the hearing or submit written comments no later than 5:00 p.m. on **February 25<sup>th</sup>, 2010**. Written comments will be given the same consideration as oral testimony given at the hearing. Written comments should be addressed to Kristin Jones, Director, Community Based Behavioral Health Services, Youth and Family Services Children, Youth and Families Department, P.O. Drawer 5160, Santa Fe, New Mexico 87502, Fax Number: 505-476-0225.

If you are a person with a disability and you require this information in an alternative format or require special accommodations to participate in the public hearing, please contact Ken Warner, Youth and Family Services, Children, Youth and Families Department, 505-827-3955. Please allow at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

### NEW MEXICO BOARD OF CHIROPRACTIC EXAMINERS

#### RULE HEARING AND REGULAR BOARD MEETING

The New Mexico Board of Chiropractic Examiners will hold a Rule Hearing and regular meeting on March 1, 2010. Following the Rule Hearing the New Mexico Board of Chiropractic Examiners Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Chiropractic Examiners Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. Portions of the regular meeting may be closed to the public while the Board is in Executive Session. *Pursuant to Section 10-15-1.H of the Open Meetings Act.*

The meetings will be held at the Toney Anaya Building, Hearing Rm. # 1 Floor, 2550 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules in NMAC 16.4 Chiropractic Advanced Practice Certification Registry 16.4.15 NMAC.

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 Capital Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87505, or call (505) 476-4613 after February 15, 2010. 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 February 15, 2010. 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) 476-4613 at least two weeks prior to the meeting or as soon as possible.

## NEW MEXICO DEPARTMENT OF HEALTH

### NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on the proposed amendment of 7.27.2 NMAC ("Licensing of Emergency Medical Services Personnel") and the proposed creation of 7.27.10 NMAC ("Certification of Emergency Medical Services Agencies"). The hearing will be held on Friday, February 19, 2010 at 9:30 a.m. in the Harold Runnels Building auditorium, located at 1190 St. Francis Drive in Santa Fe, New Mexico.

The public hearing will be conducted to receive public comment regarding proposed changes to sections of 7.27.2 NMAC, as well as to receive public comment regarding the creation of a new rule, 7.27.10 NMAC, which would create certification standards for EMS agencies not currently regulated by the Public Regulation Commission or otherwise exempt under the proposed rule.

A copy of these materials may be obtained from, and written comments may be submitted to:

Charles Schroeder, EMS Licensing Manager  
EMS Bureau  
New Mexico Department of Health  
1301 Siler Rd., Bldg. F  
Santa Fe, NM 87507  
(505) 476-8246

If you are an individual with a disability who is in need of special assistance or accommodations to attend or participate in the hearing, please contact Charles Schroeder at the above address or telephone number. The Department requests at least ten (10) days' advance notice for special accommodations requests.

## NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION

### NOTICE OF PUBLIC HEARING

The Human Services Department, Child Support Enforcement Division, proposes to repeal and replace the Establishment of Paternity 8.50.107 NMAC and Establishment of Support Order 8.50.108 NMAC in order to address the changes, expansions, and clarifications required by the New Mexico Uniform Parentage Act passed in legislation with an effective date of January 1, 2010.

A public hearing to receive testimony on this

proposed regulation will be held on Friday, February 12, 2010 at 9:00 a.m.

The hearing will be held at the Child Support Enforcement Division Law Library located in Pollon Plaza, 2009 South Pacheco St., Santa Fe, NM 87505. Individuals wishing to testify may contact the Child Support Enforcement Division, P.O. Box 25110, Santa Fe, NM 87504, or by calling toll free 1-800-432-6217, or in Santa Fe at (505) 476-7070.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-288-7207, in Santa Fe at (505) 476-7203, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a ten (10) day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing. All written and oral testimony will be considered prior to issuance of the final regulation. Please send comments to:

Melanie G. Rivas, Management Analyst-A  
Human Services Department  
P.O. Box 25110 Pollon Plaza  
Santa Fe, N.M. 87504

You may send comments electronically to: [melanieg.rivas@state.nm.us](mailto:melanieg.rivas@state.nm.us) or via fax to (505) 476-7045

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### NOTICE OF PUBLIC HEARING

The Human Service Department will hold a public hearing to consider proposed rules to the Food Stamp Program. The original hearing date of Friday, January 15, 2010 at 10:30 pm to 11:30 am has been rescheduled for January 22, 2010 at 10:30 am. The location remains the same at the Income Support Division conference room, 2009 S. Pacheco Street., Santa Fe, NM. The conference room is located on in Room 120 on the lower level of Pollon Plaza.

The proposed regulation is available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html> and in the New Mexico

Register, Volume XX, Number 23 published on December 15, 2009 at <http://www.nmcpr.state.nm.us/nmregister/>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7250.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to

Kathryn Falls, Secretary Designate  
Human Services Department  
P.O. Box 2348 Pollon Plaza  
Santa Fe, NM 87504-2348

You may send comments electronically to: [sandra.bivens@state.nm.us](mailto:sandra.bivens@state.nm.us) or via fax to (505) 827-7259.

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

### NOTICE OF PUBLIC HEARING

In an effort to improve the reach of the Food Stamp Program (FSP) and help struggling working families the Human Services Department (HSD) is proposing adoption of a more broad-based categorical eligibility policy, as well as a change to the conversion factor used for calculating weekly income, from 4.3 to 4.0 and 2.15 to 2.0 for bi-weekly income. Additionally, the Department proposes to align the time processing standards in the General Provisions Chapter of NMAC with the time processing standards for all programs administered by the Department.

This register and proposed regulations are available on the Human Services Department website at <http://www.hsd.state.nm.us/isd/ISDRegisters.html>. If you do not have Internet access, a copy of the proposed regulations may be requested by contacting



Income Support Division Policy and Program Development Bureau at 827-7274.

A public hearing to receive testimony on this regulation will be held on February 16 at 10am.

The hearing will be held at the Income Support Division Conference Room at Pollon Plaza, 2009 S. Pacheco St., Santa Fe, NM 87505. The Conference room is located in room 120 on the lower level. Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling toll free 1-800-432-6217.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the New Mexico Human Services Department toll free at 1-800-432-6217, in Santa Fe at 827-9454, or through the New Mexico Relay system, toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to

Kathryn Falls, Secretary Designate  
Human Services Department  
P.O. Box 2348 Pollon Plaza  
Santa Fe, NM 87504-2348

You may send comments electronically to: [sandra.bivens@state.nm.us](mailto:sandra.bivens@state.nm.us) or via fax to (505) 827-7259.

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing on January 19, 2010, at 9:00 a.m., in the South Park conference room, 2055 S. Pacheco, Ste. 500-590, Santa Fe, New Mexico.

The subject of the hearing is Behavioral Health Professional Services. The Human Services Department, Medical Assistance Division, has determined a critical need to revise 8.310.8 NMAC, *Behavioral Health Professional Services*. The change is necessary to support the full implementation

of Core Service Agencies (CSA). The New Mexico Behavioral Health Collaborative's efforts to transform the behavioral health system care include the introduction and enrollment of core service agencies. This emergency rule's focus is the inclusion of a CSA as a recognized and approved Medicaid provider agency and supports the Collaborative's efforts at transformation.

Interested persons may submit written comments no later than 5:00 p.m., January 19, 2010, to Kathryn Falls, Secretary-Designate, Human Services Department, PO 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.hsd.state.nm.us/mad/register](http://www.hsd.state.nm.us/mad/register) by sending a self-addressed stamped envelope to Medical Assistance Division, Long -Term Services and Support Bureau, PO Box 2348, Santa Fe, NM. 87504-2348.

## NEW MEXICO STATE PERSONNEL BOARD

### State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Thursday, March 4, 2010. The hearing will be held during the Board's regular business meeting beginning at 8:00 a.m., at the State Personnel Office, Willie Ortiz Building at 2600 Cerrillos Road, Santa Fe, New Mexico 87505.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to 1.7.4 NMAC Pay.

A final agenda for the board meeting will be available at the Board office on February 19, 2010.

Persons desiring to present their views on the proposed changes may appear in person at said time and place or may submit written comments no later than 5:00 p.m. February 15, 2010, to the Board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87505, attention, Ken Giles. A copy of the proposed rule is available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at [www.spo.state.nm.us/](http://www.spo.state.nm.us/) beginning January 15, 2010.

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

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### NOTICE OF PUBLIC HEARING

The Public Education Department (PED) hereby give notice that the PED will conduct a public hearing at Mabry Hall, Jerry Apodaca Building, at 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on Monday, February 15, 2010, from 12:00 to 1:30 PM.

The purpose of the public hearing will be to obtain input on the following Professional Licensure Rule:

<b>6.60.7 NMAC</b>	<b>EDUCATOR LICENSURE APPLICATION FEE</b>
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The proposed rules will be made available on the PED website at least thirty days prior to the hearings.

Interested individuals may testify at the public hearing or submit written comments to Ms. Flo Martinez, Administrative Assistant, Licensure Bureau, Educator Quality Division, Public Education Department, 300 Don Gaspar Ave., Room 103, Santa Fe, NM 87501, email ([florence.martinez@state.nm.us](mailto:florence.martinez@state.nm.us)) fax: 505-827-4148. Written comments must be received no later than 5:00 PM on February 15, 2010. However, the submission of written comments as soon as possible is encouraged.

The proposed rule may be accessed on the PED website at (<http://ped.state.nm.us>) or, obtained from Ms. Martinez as indicated in the following paragraph, by providing a self-addressed stamped envelope to Ms. Martinez at the Professional Licensure Bureau, 300 Don Gaspar Ave., Room 103 in Santa Fe, NM. 87501.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Ms. Martinez as soon as possible. The PED requests at least ten (10) days advance notice to provide request special accommodation.

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on **Wednesday, March 10, 2010, from 9:00 a.m. to 11:00 a.m.** The purpose of the public hearing will be to obtain input on a proposed amendment of rule 6.10.5 NMAC "SCHOOL CALENDAR REQUIREMENTS," which amends the recently amended former Variable School Calendar rule.

Interested individuals may testify either at the public hearing or submit written comments to Julia Rosa Emslie, Director, Quality Assurance Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([juliarosa.emslie@state.nm.us](mailto:juliarosa.emslie@state.nm.us)) (505) 827-4292 fax (505) 827-4242. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments sooner than the hearing date is

encouraged.

Copies of the proposed rule may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Julia Rosa Emslie, Director, Quality Assurance Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([juliarosa.emslie@state.nm.us](mailto:juliarosa.emslie@state.nm.us)) (505) 827-4292 fax (505) 827-4242.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Emslie as soon as possible. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

## NEW MEXICO BOARD OF THANATOPRACTICE

### LEGAL NOTICE

#### Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Thanatopractice will hold a Rule Hearing on Friday, February 26, 2010. Following the Rule Hearing the New Mexico Board of Thanatopractice will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Thanatopractice Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the Rio Grande Room at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.64.2 NMAC: Fees; 16.64.3 NMAC: Requirements for Licensure; 16.64.4 NMAC: Requirements for Establishments and Crematories; 16.64.5 NMAC: Examinations; 16.64.6 NMAC: Continuing Education; 16.64.7 NMAC: License Renewal; 16.64.8 NMAC: Funeral Service Intern Practices; 16.64.11 NMAC: Complaints; 16.64.12 NMAC: Parental Responsibility Act Compliance.

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, (505)476-4970,

or send an e-mail to [Thanatoboard@state.nm.us](mailto:Thanatoboard@state.nm.us) after January 26, 2010. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than February 10, 2010. 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.

The Board may enter into Executive Session pursuant to § 10-15-1 of the Open Meetings Act, to discuss matters related to the issuance, suspension, renewal or revocation of licenses.

The proposed rules will be posted to the website by January 26, 2010 and a copy of the agenda for the meeting will be available at least 24 hours prior to the meeting and can be obtained by contacting the Board Office at (505)476-4970.

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) 476-4970 at least two weeks prior to the meeting or as soon as possible.

Martha L. Gallegos, Administrator  
PO Box 25101- Santa Fe, New Mexico  
87504

## End of Notices and Proposed Rules Section

# Adopted Rules

## NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.33.6 NMAC, Section 8, effective 01-15-10.

### 19.33.6.8 THREATENED AND ENDANGERED SPECIES OF NEW MEXICO:

#### A. MAMMALS

##### (1) Endangered:

(a) Arizona shrew, *Sorex arizonae*  
(b) Mexican long-nosed bat, *Leptonycteris nivalis*  
(c) (Penasco) least chipmunk, *Neotamias minimus atristriatus*  
(d) meadow jumping mouse, *Zapus hudsonius*  
(e) (Arizona) montane vole, *Microtus montanus arizonensis*  
(f) gray wolf, *Canis lupus*  
[~~(g) (desert) bighorn sheep, *Ovis canadensis mexicana*~~]

##### (2) Threatened:

(a) least shrew, *Cryptotis parva*  
(b) southern long-nosed bat, *Leptonycteris curasoae*  
(c) spotted bat, *Euderma maculatum*  
(d) western yellow bat, *Lasiurus xanthius*  
(e) white-sided jackrabbit, *Lepus callotis*  
(f) (Organ mountains) Colorado chipmunk, *Neotamias quadrivittatus australis*  
(g) southern pocket gopher, *Thomomys umbrinus*  
(h) American marten, *Martes Americana*  
(i) (desert) bighorn sheep, *Orvis canadensis mexicana*

(3) Listing excepts individuals and populations of the desert bighorn sheep in the Peloncillo mountains in Hidalgo county and all stock in captivity.

#### B. BIRDS

##### (1) Endangered:

(a) brown pelican, *Pelecanus occidentalis*  
(b) aplomado falcon, *Falco femoralis*  
(c) white-tailed ptarmigan, *Lagopus leucurus*  
(d) whooping crane, *Grus americana*  
(e) least tern, *Sterna antillarum*  
(f) common ground-dove, *Columbina passerina*  
(g) buff-collared nightjar, *Caprimulgus ridgway*  
(h) elegant trogon, *Trogon elegans*  
(i) northern beardless-tyrannulet,

*Camptostoma imberbe*

(j) (southwestern) willow flycatcher, *Empidonax traillii extimus*  
(k) thick-billed kingbird, *Tyrannus crassirostris*

(l) (Arizona) grasshopper sparrow, *Ammodramus savannarum ammodramus*

##### (2) Threatened:

(a) neotropical cormorant, *Phalacrocorax brasilianus*  
(b) bald eagle, *Haliaeetus leucocephalus*  
(c) common black-hawk, *Buteogallus anthracinus*  
(d) peregrine falcon, *Falco peregrinus*  
(e) (Gould's) wild turkey, *Meleagris gallopavo mexicana*  
(f) piping plover, *Charadrius melodius*  
(g) whiskered screech-owl, *Megascops trichopsis*  
(h) boreal owl, *Aegolius funereus*  
(i) broad-billed hummingbird, *Cynanthus latirostris*  
(j) white-eared hummingbird, *Hylocharis leucotis*  
(k) violet-crowned hummingbird, *Amazilia violiceps*  
(l) lucifer hummingbird, *Calothorax lucifer*  
(m) Costa's hummingbird, *Calypte costae*  
(n) Gila woodpecker, *Melanerpes uropygialis*  
(o) Bell's vireo, *Vireo bellii*  
(p) gray vireo, *vireo vicinior*  
(q) Abert's towhee, *Pipilo aberti*  
(r) Baird's sparrow, *Ammodramus bairdii*  
(s) yellow-eyed junco, *Junco phaeonotus*  
(t) varied bunting, *Passerina versicolor*

#### C. REPTILES

##### (1) Endangered:

(a) Gila monster, *Heloderma suspectum*  
(b) sand dune lizard, *Sceloporus arenicolus*  
(c) gray-checked whiptail, *Aspidoscelis dixonii*  
(d) gray-banded kingsnake, *Lampropeltis alterna*  
(e) Mexican gartersnake, *Thamnophis eques*  
(f) plain-bellied water snake, *Nerodia erythrogaster*  
(g) (New Mexico) ridgenosed rattlesnake, *Crotalus willardi obscurus*  
(2) Threatened:  
(a) western river cooter, *Pseudemys gorzugi*  
(b) Slevin's bunch grass lizard, *Sceloporus slevini*

(c) canyon spotted whiptail, *Aspidoscelis burti*

(d) mountain skink, *Eumeces callicephallus*

(e) green ratsnake, *Senticolis triaspis*

(f) narrow-headed gartersnake, *Thamnophis rufipunctatus*

(g) western ribbonsnake, *Thamnophis proximus*

(h) (mottled) rock rattlesnake, *Crotalus lepidus lepidus*

#### D. AMPHIBIANS

##### (1) Endangered:

(a) Jemez mountains salamander, *Plethodon neomexicanus*  
(b) lowland leopard frog, *Rana yavapaiensis*  
(c) mountain toad, *Bufo boreas*  
(d) Great Plains narrow-mouthed toad, *Gastrophryne olivacea*

##### (2) Threatened:

(a) Sacramento mountain salamander, *Aneides hardii*  
(b) Sonoran desert toad, *Bufo alvarius*

#### E. FISHES

##### (1) Endangered:

(a) Gila chub, *Gila intermedia*  
(b) Headwater chub, *Gila nigra*  
(c) Chihuahua chub, *Gila nigrescens*  
(d) roundtail chub, *Gila robusta*  
(e) Rio Grande silvery minnow, *Hybognathus amarus*  
(f) spikedace, *Meda fulgia*  
(g) Arkansas river shiner, *Notropis girard*  
(h) (Pecos) bluntnose shiner, *Notropis simus pecosensis*  
(i) southern redbelly dace, *Phoxinus erythrogaster*  
(j) Colorado pikeminnow, *Ptychocheilus lucius*  
(k) loach minnow, *Tiaroga cobitis*  
[~~(k)~~] (l) (Zuni) bluehead sucker, *Catostomus discobolus yarrowi*  
[~~(h)~~] (m) blue sucker, *Cycleptus elongates*  
(n) gray redhorse, *Moxostoma congestum*  
[~~(m)~~] (o) Pecos gambusia, *Gambusia nobilis*  
(2) Threatened:  
(a) Gila trout, *Oncorhynchus gilae*  
(b) Mexican tetra, *Astyanax mexicanus*  
(c) peppered chub, *Macrhybopsis tetranema*  
(d) suckermouth minnow, *Phenacobius mirabilis*  
[~~(e)~~] loach minnow, *Tiaroga cobitis*  
(f) gray redhorse, *Moxostoma congestum*  
[~~(g)~~] (e) Pecos pupfish,



*Cyprinodon pecosensis*  
 [(th)] (f) White Sands pupfish,  
*Cyprinodon tularosa*  
 [(t)] (g) Gila topminnow,  
*Poeciliopsis occidentalis*  
 [(t)] (h) greenthroat darter,  
*Etheostoma lepidum*  
 [(\*)] (i) bigscale logperch, *Percina macrolepida*  
 (3) **Listing exceptions:** Gila trout-excludes the population in McKnight creek, Grant county; Arkansas river shiner-excludes the population in the Pecos river drainage; bigscale logperch-excludes the population in the Canadian river drainage  
**F. CRUSTACEANS:**  
 (1) **Endangered:**  
 (a) Socorro isopod, *Thermosphaeroma thermophilum*  
 (b) Noel's amphipod, *Gammarus desperatus*  
**G. MOLLUSKS**  
 (1) **Endangered:**  
 (a) paper pondshell, *Utterbackia imbecillis*  
 (b) Texas hornshell, *Popenaias popeii*  
 (c) Koster's springsnail, *Juturnia kosteri*  
 (d) Alamosa springsnail, *Pseudotryonia alamosae*  
 (e) Chupadera springsnail, *Pyrgulopsis chupaderae*  
 (f) Socorro springsnail, *Pyrgulopsis neomexicana*  
 (g) Roswell springsnail, *Pyrgulopsis roswellensis*  
 (h) Pecos assiminea, *Assiminea pecos*,  
 (i) wrinkled marshsnail, *Stagnicola caperata*  
 (j) Florida mountainsnail, *Oreohelix florida*  
 (2) **Threatened:**  
 (a) lake fingernailclam, *Musculium lacustre*  
 (b) swamp fingernailclam, *Musculium partumeium*  
 (c) long fingernailclam, *Musculium transversum*  
 (d) Lilljeborg's peaclam, *Pisidium lilljeborgi*  
 (e) Sangre de Cristo peaclam, *Pisidium sanguinichristi*  
 (f) Gila springsnail, *Pyrgulopsis gilae*  
 (g) Pecos springsnail, *Pyrgulopsis pecosensis*  
 (h) New Mexico springsnail, *Pyrgulopsis thermalis*  
 (i) star gyro, *Gyraulus crista*  
 (j) shortneck snaggletooth, *Gastrocopta dalliana dalliana*  
 (k) ovate vertigo, *Vertigo ovata*  
 (l) Hacheta Grande woodlandsnail, *Ashmunella hebardi*  
 (m) Cooke's peak woodlandsnail,

*Ashmunella macromphala*  
 (n) Mineral creek mountainsnail, *Oreohelix pilsbryi*  
 (o) Doña Ana talussnail, *Sonorella todseni*  
 [1-11-91, 11-15-95, 12-31-96, 8-15-98; 19.33.1.8 NMAC - Rn & A, 19 NMAC 33.1.8, 4/14/00; 19.33.6.8 NMAC - Rn, 19.33.1.8 NMAC & A, 11/30/00; A, 11/14/02; A, 1/31/05; A, 9/15/05; A, 10/16/06; A, 12/29/06; A, 1/15/10]

## NEW MEXICO DEPARTMENT OF HEALTH

7.8.2 NMAC, Requirements for Adult Residential Care Facilities (filed 08/01/00) repealed 01/15/2010 and replaced by 7.8.2 NMAC, Assisted Living Facilities for Adults, effective 01/15/2010.

## NEW MEXICO DEPARTMENT OF HEALTH

### TITLE 7 HEALTH CHAPTER 8 RESIDENTIAL HEALTH FACILITIES PART 2 ASSISTED LIVING FACILITIES FOR ADULTS

**7.8.2.1 ISSUING AGENCY:**  
 New Mexico Department of Health, Division of Health Improvement, Health Facility Licensing and Certification Bureau.  
 [7.8.2.1 NMAC - Rp, 7.8.2.1 NMAC, 01/15/2010]

**7.8.2.2 SCOPE:** This rule applies to all assisted living facilities, any facility which is operated for the maintenance or care of two (2) or more adults who need or desire assistance with one (1) or more activities of daily living. This rule does not apply to the residence of an individual who maintains or cares for a maximum of two (2) relatives.  
 [7.8.2.2 NMAC - Rp, 7.8.2.2 NMAC, 01/15/2010]

**7.8.2.3 STATUTORY AUTHORITY:** The requirements set forth herein have been promulgated by the secretary of the New Mexico department of health, by authority of Section 9-7-6 of the Department of Health Act, NMSA 1978, as amended; and Sections 24-1-2, 24-1-3, 24-1-5 and 24-1-5.2 of the Public Health Act, NMSA 1978, as amended.  
 [7.8.2.3 NMAC - Rp, 7.8.2.3 NMAC, 01/15/2010]

**7.8.2.4 DURATION:**  
 Permanent.  
 [7.8.2.4 NMAC - Rp, 7.8.2.4 NMAC, 01/15/2010]

**7.8.2.5 EFFECTIVE DATE:**

01/15/2010, unless a later date is cited at the end of a section.

[7.8.2.5 NMAC - Rp, 7.8.2.5 NMAC, 01/15/2010]

### 7.8.2.6 OBJECTIVE:

**A.** Establish standards for licensing assisted living facilities in order to ensure that residents receive appropriate care and services, and regulate to ensure that the health, safety, and welfare of individuals residing and working in such facilities are protected.

**B.** Establish requirements for the construction, maintenance and operation of licensed assisted living facilities that will provide a safe, humane and homelike environment for adults who need assistance or supervision with activities of daily living but who do not need acute care, continuous nursing care, skilled nursing care or care in an intermediate care facility for the mentally retarded.

**C.** Regulate facilities in providing care for residents and utilizing available supportive services in the community to meet the needs of the residents.

**D.** Ensure facility compliance with these rules through established protocols to identify circumstances which could be harmful or dangerous to the health, safety, or welfare of the resident.

[7.8.2.6 NMAC - Rp, 7.8.2.6 NMAC, 01/15/2010]

### 7.8.2.7 DEFINITIONS:

**A. "Abuse"** means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish and is defined in the Incident Reporting Intake, Processing & Training Requirements, 7.1.13 NMAC.

**B. "Activities of daily living" (ADLs)** means the personal functional activities required by a resident for continued well-being, which include, but are not limited to:

- (1) eating;
- (2) dressing;
- (3) oral hygiene;
- (4) bathing;
- (5) grooming;
- (6) mobility; and
- (7) toileting.

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

**D. "Assisted living facility"** means any licensed facility that meets the requirements and provides services defined by this rule.

**E. "Administrator, director, or operator"** means the individual who is in charge of the day-to-day operation

of the facility and who has the responsibility to ensure facility compliance with this rule.

**F. "Advance directives"** means the written document signed by a competent person granting someone authority in a power of attorney to make health care decisions for the resident when they are unable to.

**G. "Agent"** means the resident's surrogate decision maker as applicable to individual resident needs.

**H. "Ambulatory"** means able to walk without assistance.

**I. "Administration of medication"** means delivery of medication by a licensed or certified healthcare professional.

**J. "Assistance"** means prompting, encouragement, or hands-on help with the activities of daily living by another person.

**K. "Assistance with medication"** means support provided to residents to assist them with medication delivery by non-licensed or non-certified paid staff and does not allow for the assessment of the effects of the medication.

**L. "Bathing unit"** means a tub and shower or combination unit.

**M. "Bed hold"** means the facility's policy for retaining a bed or room for a resident during the time that the resident is temporarily absent from the facility; the policy shall include time frames for the bed hold, acceptable conditions for the bed hold and any associated charges.

**N. "Capacity"** means the maximum number of persons that a facility has been licensed to accommodate.

**O. "Census"** means the total number of individual residents residing in the facility each day, including relatives who are residents. The facility census shall never exceed the licensed capacity.

**P. "Certified medication aide" (CMA)** means a person who receives specialized training by the New Mexico board of nursing pursuant to "the Nursing Practice Act," Section 61-3-1 through 61-3-30 NMSA 1978.

**Q. "Chemical restraint"** means any drug administered for discipline or the convenience of the facility and not required to treat the resident's medical symptoms.

**R. "Choice of hospice provider"** means a resident and their family or the resident's surrogate decision maker shall be given a list of hospice providers and have the right to choose a hospice provider; the referring party shall disclose any ownership interest in a recommended or listed hospice provider if applicable.

**S. "Cognitive status"** means the thinking and reasoning ability of the resident to manage his or her own affairs and direct his or her own care.

**T. "Consulting pharmacist"** means an independent pharmacist hired by a facility to review medications in use, patient records and possible medication errors on a quarterly basis.

**U. "Continuous nursing care"** means services which are provided to a resident whose medical needs are of such complexity that the services of a nurse are required to assess, regularly reevaluate, care plan and intervene as ordered by a physician.

(1) This includes services which are provided to a resident whose condition requires twenty-four (24) hour monitoring of vital signs and the assessment of cognitive or physical status on a daily basis.

(2) These services are provided by health care professionals, as ordered by a physician or physician extender.

(3) The required services shall be medically complex enough to require ongoing assessment, planning and intervention by licensed personnel for safe and effective care on a daily basis and consistent with the nature and the severity of the resident's condition.

**V. "Convenience"** means any action taken by a facility to control resident behavior or maintain residents with less effort by the facility and that is not in the resident's best interest or wishes.

**W. "Current written consent"** means an informed, written consent which identifies the type of medication delivery and the assistance or administration that the resident requires and is signed by the resident or surrogate decision maker or other legally appointed decision maker. All informed consents shall be signed annually or when there is any change in either the resident's functional ability or the designation of a new surrogate decision maker.

**X. "Crisis prevention/intervention plan"** means a documented procedure that provides guidance to staff when a resident has a medical condition or challenging behavior that has the potential to escalate to a severity level which poses great risk of harm to the resident or others (e.g., diabetic, seizure disorder, aggression, or combativeness).

**Y. "Decision making capacity"** means the ability of the resident to understand and comprehend the nature and consequences of a proposed decision, including the benefits and risks of and alternatives to any such proposed decision and to reach an informed decision.

**Z. "Department"** means the New Mexico department of health.

**AA. "Designee"** means an individual appointed to assume responsibility for specific assigned duties.

**AB. "Direct care staff"** means any and all employees or volunteers

who work directly with the residents in daily living activities at the facility.

**AC. "Discipline"** means any action taken by the facility for the purpose of punishing or penalizing any resident.

**AD. "Facility"** means an assisted living facility.

**AE. "Facility license"** means the document issued by the licensing authority which authorizes the operation of a facility.

**AF. "General supervision"** means the availability of direct care staff in the facility, on a twenty-four (24) hour basis, to respond to the needs of the residents and to perform periodic checks on the residents.

**AG. "Health care professional"** means a New Mexico licensed health care professional such as a physician, chiropractor, pharmacist, nurse practitioner, physician assistant, registered nurse, licensed practical nurse, physical therapist, speech therapist, occupational therapist, psychologist, social worker, dietitian or dentist.

**AH. "Independent"** means the ability to perform activities of daily living without assistance.

**AI. "Individual service plan" or "ISP"** means a comprehensive plan, developed by the interdisciplinary team that identifies all treatment, habilitation and services for a resident.

**AJ. "Intramuscular injection" or "IM"** means the insertion of a needle into a muscle to administer medication.

**AK. "Intravenous" or "IV"** means the insertion of a needle into a vein to administer medication.

**AL. "Licensee"** means the person who, or the organization that has ownership, leasehold or similar interest in the facility and in whose name a license for an assisted living facility has been issued and who is legally responsible for compliance with this rule.

**AM. "Licensing authority"** means the New Mexico department of health, health facility licensing and certification bureau.

**AN. "Licensed or certified personnel"** means New Mexico licensed registered nurses (RNs), licensed practical nurses (LPNs) and certified medication aides (CMAs), licensed or certified by the New Mexico board of nursing pursuant to "the Nursing Practice Act," 61-3-1 through 61-3-31 NMSA 1978.

**AO. "Licensed practical nurse (LPN)"** means a person who has specialized training and is licensed by the New Mexico board of nursing pursuant to the "Nursing Practice Act," 61-3-1 through 61-3-31 NMSA 1978.

**AP. "Medication assistance record" (MAR)** means the document that is

used to record the details of medication. The MAR shall include all of the information pursuant to Subsection G of 7.8.2.35 NMAC of this rule.

**AQ. "Medication delivery method"** means the method by which a resident takes or receives medication (i.e., pills, eye drops, intramuscular injection, other).

**AR. "Medication error"** means the administration of any medication incorrectly (i.e., dosage, selection of drug, selection of resident, time or method of administration, omission of prescribed medication or the administration of a medication without a valid order).

**AS. "Medication route"** means the method of medication entry into a resident's body (e.g., oral, ocular, rectal, topical, nasal, injection and intravenous).

**AT. "Misappropriation/exploitation"** means the deliberate misplacement of a resident's property, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent and is defined in the Incident Reporting Intake, Processing & Training Requirements, 7.1.13 NMAC.

**AU. "Mobile"** means able to walk with assistance, or the ability to move from place to place with the use of a device such as a walker, cane, crutches, or a wheelchair and the capability of making independent bed-to-chair transfers.

**AV. "Nebulizer"** means an atomizer equipped to produce a fine mist for deep inhalation into the lungs.

**AW. "Neglect"** means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness and is defined in the Incident Reporting Intake, Processing & Training Requirements, 7.1.13 NMAC.

**AX. "New facility"** means any building not previously or currently licensed as an assisted living facility.

**AY. "Non-mobile"** means a person who is capable of achieving mobility only with the assistance of another person plus devices such as a wheel chair.

**AZ. "Nurse monitoring"** means a higher level of monitoring by a registered nurse (RN) for a specified length of time based on the resident's need(s) related to a specific condition.

**BA. "Physician extender"** means the term used to refer to physician assistants (working in conjunction with a physician) and nurse practitioners.

**BB. "Physical restraint"** means any manual, physical or mechanical device, any material or equipment attached to or adjacent to the resident's body that the resident cannot easily remove which restricts freedom of movement or is used for discipline or for the convenience of the facility (e.g., full bed rails).

**BC. "Primary care practitioner" (PCP)** means a physician, nurse practitioner or physician's assistant (licensed in the state of New Mexico) who oversees the health care of the resident.

**BD. "Private duty attendant"** means an individual that provides direct care under the definitions of the NM Caregivers Criminal History Screening Program, 7.1.9 NMAC. The individual is hired by the resident or family through a licensed agency, hired directly or works through a separate arrangement with the family.

**BE. "Pro re nada medication (PRN)"** means prescribed or over-the-counter medications, including comfort medications, that are administered or taken only on an as needed basis when symptoms warrant or as directed by the primary care practitioner (PCP).

**BF. "Policy"** means a statement of principle that guides and determines present and future decisions and actions.

**BG. "Procedure"** means the action(s) that shall be taken in order to implement a policy.

**BH. "Protocols"** are the specific means by which a procedure or treatment is to take place.

**BI. "Programmatic services"** means services provided to residents as defined by the facilities program narrative.

**BJ. "Program narrative"** is a written statement identifying the primary population to be served and the services that will be provided to meet these needs.

**BK. "Registered nurse" (RN)** means a person that has specialized training and is licensed by the New Mexico board of nursing pursuant to the "Nursing Practice Act," 61-3-1 through 61-3-31 NMSA 1978.

**BL. "Relative"** means husband, wife, significant other, mother, father, son, daughter, brother, sister, brother-in-law, sister-in-law, father-in-law, mother-in-law, grandfather, grandmother, half-brother or half-sister.

**BM. "Resident"** means an individual receiving services and residing in the licensed facility; including the relatives of a licensee.

**BN. "Resident evaluation form"** means a written document of the information acquired during the assessment of a resident's functional capacities and limitations. This form is to be utilized for pre-admission and ongoing evaluation of a resident.

**BO. "Resident preference"** means the resident's choice or preferred choice among the available options.

**BP. "Restraints"** means anything which restricts freedom of

movement or is used for discipline or for the convenience of the facility. This includes both chemical and physical restraints (e.g., full bed rails, over medicated, etc.).

**BQ. "Room and board"** means living/sleeping space, meals and snacks appropriate to meet the needs of the residents.

**BR. "Sanctions"** means a measure imposed on a licensee for a violation(s) of applicable licensing requirements other than license revocation, suspension, or denial of renewal of license as provided for by Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

**BS. "Self care"** means the performance of ADLs, activities or tasks by the residents themselves rather than performed by or assisted with the facility staff.

**BT. "Self medication"** means administration of PCP prescribed medication by the resident to whom it was prescribed.

**BU. "Side effect"** means a result of a drug or other form of therapy in addition to or in extension of the desired therapeutic effect.

**BV. "Significant change in health status"** means the resident has experienced one or more of the following:

(1) a decline or improvement in physical ability;

(2) a decline or improvement in cognitive or functional ability;

(3) a new diagnosis or event that requires a change in medication, or treatment or that requires a revision to an individual service plan; or

(4) a change in medication or the medication route that would permanently alter the level of assistance with medication delivery.

**BW. "Surrogate decision maker"** means the resident's agent, guardian or surrogate as defined in the "Uniform Health-Care Decisions Act," 24-7A-1 through 24-7A-186 NMSA 1978 or other legally appointed decision maker.

**BX. "Survey"** means a monitoring visit by the licensing authority to examine the facility premises and records and to interview the residents and staff.

**BY. "Stable"** means the resident's condition is unchanged; signs or symptoms are within established ranges, frequencies or patterns. The resident's condition does not require frequent monitoring by a licensed nurse to determine the resident's status or the resident's response to medication or treatment.

**BZ. "Staff or employee"** means the individuals hired or subcontracted by the facility to implement the individual service plan for the residents.

**CA. "Subcutaneous injection"** means the insertion of a needle



under the skin but above the muscle layer to administer medication.

**CB. "Therapeutic diet"** means a diet other than a regular diet, ordered by a physician to manage a health condition.

**CC. "Volunteers"** means unpaid individuals who provide care or services for the residents.

**CD. "Variance"** means a decision that is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for an unspecified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

**CE. "Visit notes"** means the documentation of services provided by outside agencies for ongoing care coordination of the resident.

**CF. "Waive or waiver"** means a decision that is made at the discretion of the licensing authority to allow a facility to deviate from a portion(s) or to modify a provision of this rule for a limited and specified period of time, provided that the health, safety, or welfare of the residents and staff are not in danger.

[7.8.2.7 NMAC - Rp, 7.8.2.7 NMAC, 01/15/2010]

## **7.8.2.8 G E N E R A L LICENSING REQUIREMENTS:**

### **A. Licensure is required.**

No person or entity shall establish, maintain or operate an assisted living facility without first obtaining a license.

**B. Application for licensure.** An initial or renewal application shall be made on the forms prescribed by and available from the licensing authority. The issuance of an application form is not a guarantee that the completed application will be accepted, or that the department will issue a license. Information provided by the facility and used by the licensing authority for the licensing process shall be accurate and truthful. The licensing authority will not issue a new license if the applicant has had a health facility license revoked or renewal denied or has surrendered a license under threat of revocation or denial of renewal. The licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of applicable rules found to be class A or class B deficiencies as defined in Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC or has been non-compliant with plans of correction. The licensing authority will not issue a license until the applicant has supplied all of the information that is required by this rule. Any facility that fails to participate in good faith by falsifying information presented in the licensing process shall be denied licensure by the department. The

following information shall be submitted to the licensing authority for approval:

(1) a letter of intent that includes the proposed physical address, the primary population of the facility and a summary of the proposed services; after the letter of intent has been received, an application packet including; the application form, fee schedule and the licensing rule will be issued to the applicant by the licensing authority;

(2) the completed and notarized application and the appropriate non-refundable fee(s);

(3) a program narrative identifying and detailing the geographic service area, the primary population including any special needs requirements, along with a full description of the services that the applicant proposes to provide including:

(a) a description of the characteristics of the proposed population of the facility;

(b) a description of the services and care that will be provided to the residents;

(c) a description of the anticipated professional services to be offered to the residents; and

(d) a description of the facility's relationship to other services and related programs in the service area and how the applicant will collaborate with them to achieve a system of care for the residents.

(4) policies and procedures annotated to this rule;

(5) evidence to establish that the applicant has sufficient financial assets to permit operation of the facility for a period of six (6) months; the evidence shall include a credit report from one of the three recognized credit bureaus with a minimum credit score of six-hundred fifty (650) or above;

(6) copies of organizational documents to include the following list of items:

(a) the names of all persons or business entities that have at least five percent (5%) ownership interest in the facility, whether direct or indirect and whether in profits, land or building; this includes the owners of any business entity which owns all or part of the land or building;

(b) the identities of all creditors that hold a security interest in the premises, whether land or building;

(c) any changes in ownership or management shall be reported to the department within thirty (30) days;

(7) building plans as required at 7.8.2.41 NMAC of this rule;

(8) fire authority approval as required at 7.8.2.60 NMAC of this rule;

(9) a letter of approval or exemption from the local health authority having jurisdiction for the food service and the kitchen facility;

(10) a copy of liquid waste

disposal and treatment system permit from local health authority having jurisdiction;

(11) approval from local zoning authority;

(12) building approval (certificate of occupancy); and

(13) any other information that the applicant wishes to provide or that the licensing authority may request.

**C. Application for amended license.** A licensee shall submit an application for an amended license and the required non-refundable fee to the licensing authority prior to a change with the facility. An amended license is required for a change of: location, administrator, facility name, capacity or any modification or addition to the building.

(1) An application for a change of the facility administrator or change of the administrator's name shall be submitted to the licensing authority within ten (10) business days of the change.

(2) An application for increase in capacity shall be accompanied by a building plan pursuant to 7.8.2.41 NMAC of this rule. A facility shall not increase census until the licensing authority has reviewed and approved the increase and has issued a new license that reflects the approved increase in capacity.

**D. Application for license renewal.** Each facility shall apply for a renewal of the annual license within thirty (30) business days prior to the license expiration date by submitting the following items:

(1) an application and the required fee;

(2) an updated program narrative, if the facility has changed the program or the focus of services;

(3) the annual fire inspection report; and

(4) the licensing authority may not issue a new license if the applicant has been cited repeatedly for violations of this rule or has been noncompliant with plans of correction or payment of civil monetary penalties.

**E. License.** Any person or entity that establishes, maintains or operates an assisted living facility shall obtain a license as required in this rule before accepting residents for care or providing services.

(1) Each facility that provides care or treatment shall obtain a separate license. The license is non-transferable and is only valid for the facility to which it is originally issued and for the owner or operator to whom it is issued. It shall not be sold, reassigned or transferred.

(2) The maximum capacity specified on the license shall not be exceeded.

(3) If the facility is closed and the residents are removed from the facility,

the license shall be returned to the licensing authority. Written notification shall be issued to all residents or the residents' surrogate decision maker and the licensing authority at least thirty (30) calendar days prior to the closure.

#### **F. Temporary license.**

(1) A temporary license may be issued to a new facility before residents are admitted provided that the facility has met all of the life safety code requirements as stated in this rule and policies and procedures for the facility have been reviewed and approved.

(2) Upon receipt of a temporary license, the facility may begin to admit up to three (3) residents.

(3) After the facility has admitted up to three (3) residents, the facility operator or owner shall request an initial health survey from the licensing authority.

(4) Following a determination of compliance with this rule by the licensing authority, an annual license will be issued. The renewal date of the annual license is based on the initial date of the first temporary license.

(5) The licensing authority has the right to determine compliance or noncompliance.

(6) A temporary license shall cover a period of time, not to exceed one hundred twenty (120) calendar days.

(7) No more than two (2) consecutive temporary licenses shall be issued. If a second temporary license is issued, an additional non-refundable fee is required. If all requirements are not met within the two hundred forty (240) day time frame, the applicant shall repeat the application process.

**G. Annual license.** An annual license is issued for one (1) year for a facility that has met all the requirements of this rule.

**H. Display of license.** The facility shall display the license in a conspicuous public place that is visible to residents, staff and visitors.

**I. Unlicensed facilities.** Any person or entity that opens or maintains an assisted living facility without a license is subject to the imposition of civil monetary penalties by the licensing authority. Failure to comply with the licensure requirements of this rule within ten (10) days of notice by the licensing authority may result in the following penalties pursuant to Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

(1) A civil monetary penalty not to exceed five-thousand dollars (\$5,000) per day.

(2) A base civil monetary penalty, plus a per-day civil monetary penalty, plus the doubling of penalties as applicable, that continues until the facility is in compliance

with the licensing requirements in this rule.

(3) A cease and desist order to discontinue operation of a facility that is operating without a license.

(4) Additional criminal penalties may apply and shall be imposed as necessary. [7.8.2.8 NMAC - Rp, 7.8.2.8 NMAC, 01/15/2010]

**7.8.2.9 WAIVERS AND VARIANCES.** The licensing authority may vary or waive certain licensure requirements for facilities, provided that it would not adversely affect the health, safety or welfare of the residents or staff.

**A.** Requests for a variance or waiver may be made at any time, shall be made in writing to the licensing authority and shall specify the following:

(1) the section of the rule for which the variance or waiver is requested;

(2) the time period for which the waiver is requested;

(3) if the request is for a variance; the specific alternative action that the facility proposes;

(4) the reason(s) for the request and an explanation of why and how the health, safety and welfare of the residents or staff are not endangered by the requested variance or waiver; and

(5) justification that the goal or purpose of the rule would be satisfied.

**B.** The licensing authority may require additional information from the facility prior to acting on the request.

**C.** The licensing authority may impose conditions on the variance or waiver.

**D.** The licensing authority shall limit the duration of any waiver.

**E.** Variances and waivers are nontransferable and shall be kept on file and readily available at the facility.

**F.** Variances and waivers are granted at the discretion of the licensing authority.

[7.8.2.9 NMAC - Rp, 7.8.2.9 NMAC, 01/15/2010]

**7.8.2.10 AUTOMATIC EXPIRATION OF A LICENSE:** A license shall automatically expire:

**A.** at midnight on the day indicated as the expiration date on the license;

**B.** when the operation of a facility is discontinued;

**C.** when a facility is sold or leased or the licensee changes; or

**D.** when there is a change of location for a facility.

[7.8.2.10 NMAC - Rp, 7.8.2.10 NMAC, 01/15/2010]

**7.8.2.11 SURVEY OR MONITORING VISITS:**

**A.** The licensing authority shall perform on-site survey or monitoring visits at all assisted living facilities to determine compliance with this rule.

**B.** The facility shall provide the licensing authority full access to all facility operations, buildings and information related to the operation of the facility.

**C.** The most recent survey inspection reports and related correspondence shall be posted in a conspicuous public place in the facility.

**D.** Failure by the facility to provide the licensing authority access to the premises or information, including resident records, may result in the imposition of sanctions including but not limited to civil monetary penalties, license revocation or an order to cease and desist, as deemed appropriate by the licensing authority.

[7.8.2.11 NMAC - Rp, 7.8.2.11 NMAC, 01/15/2010]

**7.8.2.12 CORRECTIVE ACTION:** If violations of this rule are cited, the facility will be provided with an official statement of deficiencies within ten (10) business days following the survey.

**A. Informal dispute review (IDR).** The facility may request an informal review of survey deficiencies by providing a written request to the licensing authority within ten (10) calendar days of receipt of the written survey findings. With the request, the facility shall include information or evidence that justifies the disagreement with a cited deficiency.

(1) The licensing authority will review the submitted information and make a determination.

(2) If the deficiency is removed, a new statement of deficiencies will be issued to the facility.

(3) The facility shall provide a new plan of correction for all remaining deficiencies upon receipt of the new statement of deficiencies.

(4) A copy of the "IDR operating rules" is available upon request.

**B. Plan of correction (POC).** The facility shall submit a plan of correction within ten (10) calendar days of receipt of the statement of deficiencies and after receipt of a revised statement of deficiencies, when the findings are changed pursuant to an IDR.

(1) If the first plan of correction (POC) is rejected by the licensing authority, the facility will be sent a second (2nd) copy of the statement of deficiencies. The facility shall complete and return the second copy of the statement of deficiencies with an acceptable plan of correction within three business days. The process will repeat until an acceptable plan of correction is received by the department.



(2) Failure to provide an acceptable plan of correction (POC) within a reasonable period of time, may lead to civil monetary penalties or other sanctions.

(3) The plan of correction shall:

(a) address how all violations identified in the official statement of deficiencies will be corrected;

(b) address how the facility will monitor the corrective action and ensure ongoing compliance; and

(c) specify the date that the corrective action will be completed.

(4) All cited violations shall be corrected within thirty (30) calendar days from the date of the survey; unless the licensing authority approves an extended date.

(5) Failure to submit an acceptable plan of correction may result in sanctions, including but not limited to civil monetary penalties, suspension or non-renewal of the facility license.

(6) The licensing authority may accept, reject, or direct the plan of correction. [7.8.2.12 NMAC - Rp, 7.8.2.12 NMAC, 01/15/2010]

#### **7.8.2.13 GROUNDS FOR REVOCATION, SUSPENSION OR DENIAL OF INITIAL OR RENEWAL OF LICENSE, OR THE IMPOSITION OF SANCTIONS OR CIVIL MONETARY PENALTIES:**

**A.** When the licensing authority determines that an application for the renewal of a license will be denied or that a license will be revoked, the licensing authority shall provide written notification to the facility, the residents and the surrogate decision makers for the residents.

**B.** After notice to the facility and an opportunity for a hearing, the department may deny an initial or renewal application, revoke or suspend the license of a facility or may impose an intermediate sanction and a civil monetary penalty as provided in accordance with the Public Health Act, Section 24-1-5.2 NMSA 1978.

**C.** Grounds for implementing these penalties may be based on the following:

(1) failure to comply with any provision of this rule;

(2) failure to allow a survey by authorized representatives of the licensing authority;

(3) the hiring or retaining of any staff or permitting any private duty attendant or volunteer to work with residents that has a disqualifying conviction under the requirements of the Caregiver's Criminal History Screening Program, 7.1.9 NMAC;

(4) the misrepresentation or falsification of any information on the application forms or other documents provided to the licensing authority;

(5) repeat violations of this rule;

(6) failure to maintain or provide services as required by this rule;

(7) exceeding licensed capacity;

(8) failure to provide an acceptable plan of correction within the time period established by the licensing authority;

(9) failure to correct deficiencies within the time period established by the licensing authority;

(10) failure to comply with the incident reporting requirements pursuant to Incident Reporting, Intake Processing and Training Requirements, 7.1.13 NMAC; and

(11) failure to pay civil monetary penalties pursuant to Health Facility Sanctions and Civil Monetary Penalties, 7.1.8 NMAC.

[7.8.2.13 NMAC - Rp, 7.8.2.13 NMAC, 01/15/2010]

#### **7.8.2.14 HEARING PROCEDURES:**

**A.** Hearing procedures for an adverse action taken against a facility by the department will be conducted in accordance with Adjudicatory Hearings for Licensed Facilities, 7.1.2 NMAC.

**B.** The facility will receive a copy of the hearing procedures at the time that an adverse action is taken or may request a copy by contacting the licensing authority.

**C.** If immediate action is required to protect human health and safety, the licensing authority may suspend a license or impose an intermediate sanction pending a hearing, provided that the hearing is held within five (5) working days of the suspension or the sanction, unless waived by the facility, in accordance with the Public Health Act, Section 24-1-5 H NMSA.

[7.8.2.14 NMAC - Rp, 7.8.2.14 NMAC, 01/15/2010]

#### **7.8.2.15 APPEALS:**

**A.** A licensee that is subject to an adverse action may request an administrative appeal. Hearing procedures for an administrative appeal of an adverse action taken by the licensing authority against the facility is in accordance with Adjudicatory Hearings for Licensed Facilities, 7.1.2 NMAC.

**B.** A copy of the adjudicatory hearing procedures will be forwarded to the facility when an adverse action is taken against the licensee by the licensing authority.

**C.** All notices, orders or decisions which the licensing authority issues to a facility prior to a transfer of ownership shall be in effect against both the former owner and the new owner, unless the transfer of penalties to the new owner is rescinded in writing by the department.

[7.8.2.15 NMAC - Rp, 7.8.2.15 NMAC, 01/15/2010]

**7.8.2.16 S T A F F QUALIFICATIONS:** A facility shall employ staff with the following qualifications.

**A. Administrator, director, operator:** an assisted living facility shall be supervised by a full-time administrator. Multiple facilities that are located within a forty (40) mile radius may have one full-time administrator. The administrator shall:

(1) be at least twenty-one (21) years of age;

(2) have a high school diploma or its equivalent;

(3) comply with the requirements of the New Mexico Caregivers Criminal History Screening Act, 7.1.9 NMAC;

(4) complete a state approved certification program for assisted living administrators;

(5) be able to communicate with the residents in the language spoken by the majority of the residents;

(6) not work while under the influence of alcohol or illegal drugs;

(7) have evidence of education and experience to prove the ability to administer, direct and operate an assisted living facility; the evidence of education and experience shall be directly related to the services that are provided at the facility;

(8) provide three (3) notarized letters of reference from persons unrelated to the applicant; and

(9) comply with the pre-employment requirements pursuant to the Employee Abuse Registry, 7.1.12 NMAC.

#### **B. Direct care staff:**

(1) shall be at least eighteen (18) years of age;

(2) shall have adequate education, relevant training, or experience to provide for the needs of the residents;

(3) shall comply with the pre-employment requirements pursuant to the Employee Abuse Registry, 7.1.12 NMAC; and

(4) shall comply with the current requirements of reporting and investigating incidents pursuant to Incident Reporting, Intake Processing and Training Requirements, 7.1.13 NMAC;

(5) if a facility provides transportation for residents, the employees of the facility who drive vehicles and transport residents shall have copies of the following documents on file at the facility:

(a) a valid New Mexico driver's license with the appropriate classification for the vehicle that is used to transport residents;

(b) documentation of training in transportation safety for the elderly and disabled, including safe vehicle operation;

(c) proof of insurance; and

(d) documentation of a clean

driving record;

(6) any person who provides direct care who is not employed by an agency that is covered by the requirements of the Caregivers Criminal History Screening Requirements, 7.1.9 NMAC, shall provide current (within the last 6 months) proof of the caregivers criminal history screening to the facility; the facility shall maintain and have proof of such screening readily available; and

(7) employers shall comply with the requirements of the Caregivers Criminal History Screening Requirements, 7.1.9 NMAC.

[7.8.2.16 NMAC - Rp, 7.8.2.16 NMAC, 01/15/2010]

#### **7.8.2.17 STAFF TRAINING:**

**A.** Training and orientation for each new employee and volunteer that provides direct care shall include a minimum of sixteen (16) hours of supervised training prior to providing unsupervised care for residents.

**B.** Documentation of orientation and subsequent trainings shall be kept in the personnel file at the facility.

**C.** Training shall be provided at orientation and at least twelve (12) hours annually, the orientation, training and proof of competency shall include:

(1) fire safety and evacuation training;

(2) first aid;

(3) safe food handling practices (for persons involved in food preparation), to include:

(a) instructions in proper storage;

(b) preparation and serving of

food;

(c) safety in food handling;

(d) appropriate personal hygiene;

and

(e) infectious and communicable disease control;

(4) confidentiality of records and resident information;

(5) infection control;

(6) resident rights;

(7) reporting requirements for abuse, neglect or exploitation in accordance with 7.1.13 NMAC;

(8) smoking policy for staff, residents and visitors;

(9) methods to provide quality resident care;

(10) emergency procedures;

(11) medication assistance, including the certificate of training for staff that assist with medication delivery; and

(12) the proper way to implement a resident ISP for staff that assist with ISPs.

**D.** If a facility provides transportation to residents, employees of the facility who drive vehicles and transport residents shall have training in transportation

safety for the elderly and disabled, including safe vehicle operation.

[7.8.2.17 NMAC - Rp, 7.8.2.17 NMAC, 01/15/2010]

**7.8.2.18 POLICIES:** The facility shall have and implement written personnel policies for the following:

**A.** staff, private duty attendant and volunteer qualifications;

**B.** staff, private duty attendant and volunteer conduct;

**C.** staff, private duty attendant and volunteer training policies;

**D.** staff and private duty attendant and volunteer criminal history screening;

**E.** emergency procedures;

**F.** medication administration;

**G.** the retention and maintenance of current and past personnel records; and

**H.** facilities shall maintain records and files that reflect compliance with NM and federal employment rules.

[7.8.2.18 NMAC - Rp, 7.8.2.17 NMAC, 01/15/2010]

**7.8.2.19 STAFFING RATIOS:** The following staffing levels are the minimum requirements.

**A.** The facility shall employ the sufficient number of staff to provide the basic care, resident assistance and the required supervision based on the assessment of the residents' needs.

(1) During resident waking hours, facilities shall have at least one (1) direct care staff person on duty and awake at all times for each fifteen (15) residents.

(2) During resident sleeping hours, facilities with fifteen (15) or fewer residents shall have at least one (1) direct care staff person on duty, awake and responsible for the care and supervision of the residents.

(3) During resident sleeping hours, facilities with sixteen (16) to thirty (30) residents shall have at least one (1) direct care staff person on duty and awake at all times and at least one (1) additional staff person available on the premises.

(4) During resident sleeping hours, facilities with thirty-one (31) to sixty (60) residents shall have at least two (2) direct care staff persons on duty and awake at all times and at least one (1) additional staff person immediately available on the premises.

(5) During resident sleeping hours, facilities with more than sixty-one (61) residents shall have at least three (3) direct care staff persons on duty and awake at all times and one (1) additional staff person immediately available on the premises for each additional thirty (30) residents or fraction thereof in the facility.

**B.** Upon request of the department, the facility shall provide the staffing ratios per each twenty-four (24) hour day for the past thirty (30) days.

[7.8.2.19 NMAC - Rp, 7.8.2.18 NMAC, 01/15/2010]

#### **7.8.2.20 ADMISSIONS AND DISCHARGE:**

The facility shall complete an admission agreement for each resident. The administrator of the facility or a designee responsible for admission decisions shall meet with the resident or the resident's surrogate decision maker prior to admission. No resident shall be admitted who is below the age of eighteen (18) or for whom the facility is unable to provide appropriate care.

**A. Admission agreement.** The admission agreement shall include the following information:

(1) the parties to the agreement;

(2) the program narrative;

(3) the facility's rules;

(4) the cost of services and the method of payment;

(5) the refund provision in case of death, transfer, voluntary or involuntary discharge;

(6) information to formulate advance directives;

(7) a written description of the legal rights of the residents translated into another language, if necessary;

(8) the facility's staffing ratio;

(9) written authorization for staff to assist with medications;

(10) notification of rights and responsibilities pursuant to the Incident Reporting Intake, Processing and Training Requirements, 7.1.13 NMAC;

(11) the facility's bed hold policy; and

(12) the admission agreement may be terminated if an appropriate placement is found for the resident, under the following circumstances:

(a) there shall be a fifteen (15) day written notice of termination given to the resident or his or her surrogate decision maker, unless the resident requests the termination;

(b) the resident has failed to pay for a stay at the facility as defined in the admission agreement;

(c) the facility ceases to operate or is no longer able to provide services to the resident;

(d) the resident's health has improved sufficiently and therefore no longer requires the services of the facility;

(e) termination without prior notice is permitted in emergency situations for the following reasons:

(i) the transfer or discharge is necessary for the resident's safety and welfare;

(ii) the resident's needs

cannot safely be met in the facility; or

(iii) the safety and health of other residents and staff in the facility are endangered;

(13) the facility shall provide a thirty (30) day written notice to residents regarding any changes in the cost or the material services provided; a new or amended admission agreement must be executed whenever services, costs or other material terms are changed; and

(14) facilities representing their services as "specialized" must disclose evidence of staff specialty training to prospective residents.

**B. Restrictions in admission.** The facility shall not admit or retain individuals that require twenty-four (24) hour continuous nursing care, refer to Subsection U of 7.8.2.7 NMAC Definitions. This rule does not apply to hospice residents who have elected to receive the hospice benefit. Conditions or circumstances that usually require continuous nursing care may include but are not limited to the following:

- (1) ventilator dependency;
- (2) pressure sores and decubitus ulcers (stage III or IV);
- (3) intravenous therapy or injections;
- (4) any condition requiring either physical or chemical restraints;
- (5) nasogastric tubes;
- (6) tracheostomy care;
- (7) residents that present an imminent physical threat or danger to self or others;
- (8) residents whose psychological or physical condition has declined and placement in the current facility is no longer appropriate as determined by the PCP;
- (9) residents with a diagnosis that requires isolation techniques;
- (10) residents that require the use of a Hoyer lift; and
- (11) ostomy (unless resident is able to provide self care).

**C. Exceptions to admission, readmission and retention.** If a resident requires a greater degree of care than the facility would normally provide or is permitted to provide and the resident wishes to be re-admitted or remain in the facility and the facility wishes to re-admit or retain the resident. The facility shall comply with the following requirements.

- (1) Convene a team, comprised of:
  - (a) the facility administrator and a facility health care professional if desired;
  - (b) the resident or resident's surrogate decision maker; and
  - (c) the hospice or home health clinician.
- (2) The team shall jointly determine if the resident should be admitted, readmitted or allowed to remain in the facility. Team approval shall be in writing,

signed and dated by all team members and the approval shall be maintained in the resident's record and shall:

(a) be based upon an individual service plan (ISP) which identifies the resident's specific needs and addresses the manner that such needs will be met;

(b) ensure that if the facility is licensed for more than eight (8) residents and does not have complete fire sprinkler coverage, the facility shall maintain an evacuation rating score of prompt as determined by the fire safety equivalency system (FSSES);

(c) evaluate and outline how meeting the specific needs of the resident will impact the staff and the other residents; and

(d) include an independent advocate such as a certified ombudsman if requested by the resident, the family or the facility.

(3) The team recommendation shall be maintained on site in the resident's file.

(4) When a resident is discharged, the facility shall record where the resident was discharged to and what medications were released with the resident.

#### **D. Coordination of care.**

(1) Assisted living facilities shall have evidence of care coordination on an ISP for all services that are provided in the facility by an outside health care provider, such as hospice or home health providers.

(2) Residents shall be given a list of providers, including hospice and home health if applicable, and have the right to choose their provider. If applicable, the referring party shall disclose any ownership interest in a recommended or listed provider. [7.8.2.20 NMAC - Rp, 7.8.2.19 NMAC & 7.8.2.20 NMAC, 01/15/2010]

### **7.8.2.21 RESIDENT RECORDS:**

**A. Record contents.** A record for each resident shall be maintained in accordance with the specific requirements of this section. Entries in each resident's record shall be legible, dated and authenticated by the signature of the person making the entry. Resident records shall be readily available on site and organized utilizing a table of contents. Each resident record shall include:

- (1) the admission agreement records, as set forth in 7.8.2.20 NMAC;
- (2) the resident evaluation form, that is to be completed within fifteen (15) days prior to admission and updated at a minimum of every six (6) months;
- (3) the current ISP, that is to be completed within ten (10) calendar days of admission and updated at a minimum of every six (6) months;
- (4) the physical examination report; the physical examination report shall

have been completed within the past six (6) months, by a primary care physician, a nurse practitioner or a physician's assistant and shall be on file in the resident's record within ten (10) days of admission;

(5) personal and demographic information for the resident, to include:

(a) current names, addresses, relationship and phone numbers of family members, or surrogate decision makers updated as necessary;

(b) resident's name;

(c) age;

(d) recent photograph;

(e) marital status;

(f) date of birth;

(g) sex;

(h) address prior to admission;

(i) religion (optional);

(j) personal physician;

(k) dentist;

(l) social history;

(m) surrogate decision maker or other emergency contact person;

(n) language spoken and understood;

(o) legal documentation relevant to commitment or guardianship status;

(p) current medications list; and

(q) required diet;

(6) unless included in the admission agreement, a separate written agreement between the facility and the resident relating to the resident's funds, in accordance with the facility's policy and procedures;

(7) entries by direct care staff, appropriate health care professionals and others authorized to care for the resident; entries shall be dated and signed by the person making the entry and shall include significant information related to the ISP;

(8) entries that provide a written account of all accidents, injuries, illnesses, medical and dental appointments, any problems or improvements observed in the resident, any condition that would indicate a need for alternative placement or medical attention and entries reflecting appropriate follow-up; the maintenance of such written documentation in the resident record may be by copy of an incident or accident report, if the original incident or accident report is maintained elsewhere by the facility;

(9) the medication assistance record (MAR); the MAR is the document that details the resident's medication; the MAR shall include all of the information pursuant to Subsection G of 7.8.2.35 NMAC of this rule;

(10) progress notes completed by any contract agency (e.g., hospice, home health); the progress notes shall include the date, time and type of health services provided;

(11) copies of all completed and signed transfer forms from the accepting



facility when a resident is transferred to a hospital or another health care facility and when the resident is transferred back to the facility; and

(12) upon the death or transfer of a resident, documentation of the disposition of the resident's personal effects and money or valuables that are deposited with the assisted living facility.

#### **B. Resident records maintenance.**

(1) Current resident records shall be maintained on-site and stored in an organized, accessible and permanent manner.

(2) The facility shall establish a policy to maintain and ensure the confidentiality of resident records, including the authorized release of information from the resident records.

(3) Non-current resident records shall be maintained by the facility against loss, destruction and unauthorized use for a period of not less than five (5) years from the date of discharge and readily available within twenty-four (24) hours of request.

(4) There shall be a policy and procedure in place for record retention in the event of facility closure.

(5) Failure to follow facility policies is grounds for sanctions.

[7.8.2.21 NMAC - Rp, 7.8.2.22 NMAC, 01/15/2010]

### **7.8.2.22 F A C I L I T Y REPORTS, RECORDS, RULES, POLICIES AND PROCEDURES:**

#### **A. Reports and records.**

Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority, residents, potential residents or their surrogate decision makers:

- (1) fire inspection report;
- (2) zoning approval;
- (3) building official approval (certificate of occupancy);
- (4) a copy of the approved building plans;
- (5) a copy of the most recent survey conducted by the licensing authority, to include adverse actions or appeals and complaints;

(6) for facilities with food establishments/kitchens that require a permit from the local health authority that has jurisdiction, a copy of the current inspection report in accordance with the applicable, municipal, or federal laws and regulations and pursuant to Subsection B of 7.6.2.8 NMAC, regarding kitchen and food management; if a facility is considered a licensed private home and not required to meet specific requirements by the local health authority, a copy of that determination must also be maintained;

(7) where necessary, a copy of the liquid waste disposal and treatment system permit from the local health authority that has jurisdiction;

(8) thirty (30) days of menus as planned, including snacks and thirty (30) days of menus as served, including snacks;

(9) record of monthly fire drills conducted at the facility and the fire safety evaluation system (FSSES) rating, if applicable;

(10) written emergency plans, policies and procedures for medical emergencies, power failure, fire or natural disaster; plans shall include evacuation, persons to be notified, emergency equipment, evacuation routes, refuge areas and the responsibilities of personnel during emergencies; plans shall also included a list of transportation resources that are immediately available to transport the residents to another location in an emergency; the emergency preparedness plan shall address two types of emergencies:

(a) an emergency that affects just the facility; and

(b) a region/area wide emergency;

(11) a copy of this rule, Requirements for Assisted Living Facilities for Adults, 7.8.2 NMAC;

(12) for facilities with two or more residents (that are not related to the owner), a valid custodial drug permit issued by the NM board of pharmacy, that supervise administration and self-administration of medications or safeguards with regard to medications for the residents; and

(13) vaccination records for pets in the facility.

#### **B. Reports and records.**

Each facility shall keep the following reports, records, policies and procedures on file at the facility and make them available for review upon request by the licensing authority:

- (1) a copy of the facility license;
- (2) employee personnel records, including an application for employment, training records and personnel actions:
- (a) caregiver criminal history screening documentation pursuant to 7.1.9 NMAC;
- (b) employee abuse registry documentation pursuant to 7.1.12 NMAC; and
- (3) a copy of all waivers or variances granted by the licensing authority.

#### **C. Rules.**

Prior to admission to a facility a prospective resident or his or her representative shall be given a copy of the facility rules. Each facility shall have written rules pertaining to resident's rights and shall include the following:

- (1) resident use of tobacco and alcohol;
- (2) resident use of facility telephone or personal cell phone;
- (3) resident use of television,

radio, stereo and cd;

(4) the use and safekeeping of residents' personal property;

(5) meal availability and times;

(6) resident use of common areas;

(7) accommodation of resident's pets; and

(8) resident use of electric blankets and appliances.

**D. Policies and procedures.** All facilities shall have written policies and procedures covering the following areas:

(1) actions to be taken in case of accidents or emergencies;

(2) policy and procedure for updating and consolidating the residents current physician or PCP orders, treatments and diet plans every six (6) months or when a significant change occurs, such as a hospital admission;

(3) policy for medication errors;

(4) method of staying informed when residents are away from the facility (e.g., sign-out sheets or other record indicating where the resident will be, cell phone contact, etc.);

(5) the handling of resident's funds, if the facility provides such services;

(6) reporting of incidents, including abuse, neglect and misappropriation of property, injuries of unknown cause, environmental hazards and law enforcement interventions in accordance with 7.1.13 NMAC;

(7) reporting and investigating internal complaints;

(8) reporting and investigating complaints to the incident management bureau;

(9) staff and resident fire and safety training;

(10) smoking policy for staff, residents and visitors;

(11) the facility's bed hold policy;

(12) admission agreement;

(13) admission records;

(14) resident records including maintenance and record retention if the facility closes;

(15) program narrative;

(16) resident's rights with regard to making health care decisions and the formulation of advance directives;

(17) personnel policies;

(18) identifying and safeguarding resident possessions;

(19) securing medical assistance if a resident's own physician is not available;

(20) staff training appropriate to staff responsibilities;

(21) staff training for employees who provide assistance to residents with boarding or alighting from motor vehicles and safe operation of motor vehicles to transport residents;

(22) witnessed destruction of

unused, outdated or recalled medication by the facility administrator with the consulting pharmacist present; and

(23) mealtimes, daily snacks, menus, special diets, resident's personal preference for eating alone or in the dining room setting.

[7.8.2.22 NMAC - Rp, 7.8.2.23 NMAC, 01/15/2010]

**7.8.2.23 PETS:** Pets are permitted in a licensed facility, in accordance with the facility's rules.

**A. Prohibited areas.**

Animals are not permitted in food processing, preparation, storage, display and serving areas, or in equipment or utensil washing areas. Guide dogs for the blind and deaf and service animals for the handicapped shall be permitted in dining areas pursuant to Subsection K of 7.6.2.9 NMAC.

**B. Vaccination.**

Pets shall be vaccinated in accordance with all state and local requirements and records of such vaccination shall be kept on file in the facility.

[7.8.2.23 NMAC - Rp, 7.8.2.24 NMAC, 01/15/2010]

**7.8.2.24 ASSISTANCE**

**WITH DAILY LIVING:** The facility shall supervise and assist the residents, as necessary, with health, hygiene and grooming needs, to include but not limited to the following:

- A.** eating;
- B.** dressing;
- C.** oral hygiene;
- D.** bathing;
- E.** grooming;
- F.** mobility; and
- G.** toileting.

[7.8.2.24 NMAC - Rp, 7.8.2.25 NMAC, 01/15/2010]

**7.8.2.25 RESIDENT EVALUATION:**

**A.** A resident evaluation shall be completed by an appropriate staff member within fifteen (15) days prior to admission to determine the level of assistance that is needed and if the level of services required by the resident can be met by the facility.

**B.** The initial resident evaluation shall establish a baseline in the resident's functional status and thereafter assist with identifying resident changes. The resident evaluation shall be reviewed and updated at a minimum of every six (6) months or when there is a significant change in the resident's health status.

**C.** The resident's evaluation shall be documented on a resident evaluation form and at a minimum include the following abilities, behaviors or status:

- (1) activities of daily living;

(2) cognitive abilities; reasoning and perception; the ability to articulate thoughts, memory function or impairment, etc;

(3) communication and hearing; ability to communicate needs and understand instructions, etc;

(4) vision;

(5) physical functioning and skeletal problems;

(6) incontinence of bowel/bladder;

(7) psychosocial well-being;

(8) mood and behavior;

(9) activity interests;

(10) diagnoses;

(11) health conditions;

(12) nutritional status;

(13) oral or dental status;

(14) skin conditions;

(15) medication use and level of assistance needed with medications;

(16) special treatments and procedures or special medical needs such as hospice; and

(17) safety needs/high risk behaviors; history of falls agitation, wandering, fire safety issues, etc.

**D.** The resident evaluation shall include a history and physical examination and an evaluation report by a physician or a physician extender within six (6) months of admission. A resident shall have a medical evaluation by a physician or a physician extender at least annually.

**E.** The resident evaluation shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or physician extender at the time the individual service plan is reviewed, at a minimum of every six (6) months or when a significant change in health status occurs.

[7.8.2.25 NMAC - Rp, 7.8.2.26 NMAC, 01/15/2010]

**7.8.2.26 INDIVIDUAL**

**SERVICE PLAN (ISP):** An ISP shall be developed and implemented within ten (10) calendar days of admission for each resident residing in the facility.

**A.** The ISP shall address those areas of need as identified in the resident evaluation and through staff observation.

(1) The ISP shall detail the services that are provided by the facility as well as the services to be provided by other agencies.

(2) The resident evaluation and the ISP shall be reviewed and if needed revised by a licensed practical nurse, registered nurse or a physician extender.

(3) The ISP shall be reviewed and or revised at a minimum of every six (6) months or when there is a significant change in the resident's health status.

**B.** The ISP shall include the following:

- (1) a description of identified

needs as noted in the resident evaluation;

(2) a written description of all services to be provided;

(3) who will provide the services;

(4) when or how often the services will be provided;

(5) how the services will be provided;

(6) where the services will be provided;

(7) expected goals and outcomes of the services;

(8) documentation of the facility's determination that it is able to meet the needs of the resident;

(9) the level of assistance that the resident will require with activities of daily living and with medications;

(10) a crisis prevention/intervention plan when indicated by diagnosis or behavior; and

(11) current orders for all medications, including those authorized for PRN usage.

[7.8.2.26 NMAC - Rp, 7.8.2.27 NMAC, 01/15/2010]

**7.8.2.27 RESIDENT**

**ACTIVITIES:** Each facility shall provide or make available recreational and social activities appropriate to the residents' abilities that meet their psychosocial needs and are relevant to their social history; including a balance of cognitive, reminiscence, physical and social activities. The facility shall post the activities and encourage residents to participate.

[7.8.2.27 NMAC - Rp, 7.8.2.28 NMAC, 01/15/2010]

**7.8.2.28 PERSONAL POSSESSIONS:**

**A.** Each resident shall be permitted to keep personal property in their possession at the facility, if it is not detrimental to the health and safety of anyone in the facility. These possessions may include, but are not limited to the following items:

(1) clothing; the facility shall ensure that each resident has his or her own clothing; residents shall be allowed and encouraged to select their daily clothing and change their clothing to suit their activities and the weather conditions;

(2) personal care items; each resident shall have his or her own personal care items such as, but not limited to, a comb, razor, hairbrush, toothbrush, toothpaste and like items.

**B.** The facility shall have policies and procedures for identifying and safeguarding resident possessions.

[7.8.2.28 NMAC - Rp, 7.8.2.29 NMAC, 01/15/2010]

**7.8.2.29**

**TRANSPORTATION:**

The facility shall either provide transportation or assist the resident in using public transportation.

**A.** The facility's motor vehicle transportation assistance program shall include the following elements:

- (1) resident evaluation;
- (2) staff training in hazardous driving conditions;
- (3) safe passenger transport and assistance;
- (4) emergency procedures and use of equipment;
- (5) supervised practice in the safe operation of motor vehicles, maintenance and safety record keeping; and
- (6) copies of employee training certificates that give evidence of successful completion of any applicable course(s) shall be kept on site in the employee files.

**B.** To assist residents in using public transportation, the facility shall provide information on bus schedules, location of bus stops and telephone numbers of taxi cab companies.

[7.8.2.29 NMAC - Rp, 7.8.2.30 NMAC, 01/15/2010]

#### **7.8.2.30 HANDLING OF RESIDENT FUNDS:**

**A.** Each resident has the right to manage their personal funds in accordance with state or federal laws.

**B.** If the facility agrees, the resident may entrust his or her personal funds to the facility for safekeeping and management. In such cases, the facility shall:

- (1) have written authorization from the resident or his or her surrogate decision maker;
- (2) maintain a written record of all financial transactions and arrangements involving the resident's funds and make this written record available upon request, to the resident, his or her surrogate decision maker and the licensing authority;
- (3) safeguard any and all funds received from the resident in an account separate from all other funds of, or held by, the facility;
- (4) upon written or verbal request by the resident or his or her surrogate decision maker, return to the resident all or any part of the resident's funds given to the facility for safekeeping and management, including all accrued interest if applicable; and
- (5) upon the resident's death, will transfer all personal funds held by the facility to the resident's estate in accordance with Section 45-3-709 NMSA 1978.

**C.** The facility shall not commingle the resident's funds, valuables or property with that of the licensee. Resident's funds, valuables or property shall be maintained separate, intact and free

from any liability of the licensee, staff and management.

[7.8.2.30 NMAC - Rp, 7.8.2.31 NMAC, 01/15/2010]

#### **7.8.2.31 HANDLING OF EMERGENCIES:**

**A.** Upon admission, each resident or surrogate decision maker shall designate a primary care practitioner (PCP) to be called in case of a medical necessity. Each resident or representative shall also designate a concerned person to be called in case of an emergency. The facility shall establish a policy to secure medical assistance if the resident's own physician is not available. In the event of an illness or an injury to the resident, the PCP or a physician extender shall be notified by the facility.

**B.** The facility shall have a first aid kit that contains at a minimum, gauze, adhesive tape, antiseptic ointment and bandages for emergencies. The first aid kit shall be kept in a designated, easily accessible place within the facility.

**C.** An easily accessible and functional telephone shall be available in each facility for summoning help in case of an emergency. A pay telephone does not fulfill this requirement.

**D.** A list of emergency numbers including: fire department, police department, ambulance services and poison control shall be posted near each public telephone in the facility.

[7.8.2.31 NMAC - Rp, 7.8.2.32 NMAC, 01/15/2010]

#### **7.8.2.32 REPORTING OF INCIDENTS:**

**A.** The facility shall insure that all suspected cases or known incidents of resident abuse, neglect or exploitation are reported in accordance with 7.1.13 NMAC.

(1) The facility shall also report any incident or unusual occurrence which has or could threaten the health, safety, or welfare of the residents and staff to the licensing authority complaint hotline within twenty-four (24) hours or by the next business day, if it is a weekend or a holiday.

(2) The facility shall not delay a report to the complaint hotline while an internal investigation is conducted.

**B.** The facility is responsible for conducting and documenting the investigation of all incidents within five (5) business days and shall submit a copy of the investigation report to the licensing authority. A copy of the report and the documentation, including the date and time that it was submitted to the licensing authority, shall be maintained on file at the facility. The investigation shall include the following:

- (1) a narrative description of the incident;

(2) the result of the facility's investigation shall be recorded on the state approved incident report form for the current year, pursuant to 7.1.13 NMAC; and

(3) plans for further actions in response to the incident.

[7.8.2.32 NMAC - Rp, 7.8.2.33 NMAC, 01/15/2010]

#### **7.8.2.33 RESIDENT RIGHTS:**

All licensed facilities shall understand, protect and respect the rights of all residents.

**A.** Prior to admission to a facility, a resident and legal representative shall be given a written description of the legal rights of the resident, translated into another language, if necessary, to meet the resident's understanding.

**B.** If the resident has no legal representative and is incapable of understanding his or her legal rights, a written copy of the resident's legal rights shall be provided to the most significant responsible party in the following order:

- (1) the resident's spouse;
- (2) significant other;
- (3) any of the resident's adult children;
- (4) the resident's parents;
- (5) any relative the resident has lived with for six or more months before admission;
- (6) a person who has been caring for, or paying benefits on behalf of the resident;
- (7) a placing agency;
- (8) resident advocate; or
- (9) the ombudsman.

**C.** The resident rights shall be posted in a conspicuous public place in the facility and shall include the telephone numbers for the incident management hotline and for the state ombudsman program.

**D.** To protect resident rights, the facility shall:

- (1) treat all residents with courtesy, respect, dignity and compassion;
- (2) not discriminate in admission or services based on gender, sexual orientation, resident's age, race, religion, physical or mental disability, or nationality;
- (3) provide residents written information about all services provided by the facility and their costs and give advance written notice of any changes;
- (4) provide residents with a safe and sanitary living environment;
- (5) provide humane care for all residents;
- (6) provide the right to privacy, including privacy during medical examinations, consultations and treatment;
- (7) protect the confidentiality of the resident's medical record;
- (8) protect the right to personal privacy, including privacy in personal hygiene; privacy during visits with a spouse,

family member or other visitor; and privacy in the resident's own room;

(9) protect the right to communicate privately and freely with any person, including private telephone conversations and private correspondence; and the right to receive visits from family, friends, lawyers, ombudsmen and community organizations;

(10) prohibit the use of any and all physical and chemical restraints;

(11) ensure that residents:

(a) are free from physical and emotional abuse neglect and misappropriation/or exploitation;

(b) are free from financial abuse and misappropriation by facility staff or management;

(c) are free to participate in religious, social, community and other activities and freely associate with persons in and out of the facility;

(d) are free to leave the facility and return without unreasonable restriction;

(e) are given a fifteen (15) calendar day, written notice before room transfers or discharge from the facility unless there is immediate danger to self or others in the facility;

(f) have an environment that fosters social interaction and avoids social isolation;

(g) or their surrogate decision makers, are informed of and consent to the services provided by the facility;

(h) have the right to voice grievances to the facility staff, public officials, the ombudsmen, any state agency, or any other person, without fear of reprisal or retaliation;

(i) have the right to have their complaints addressed within fourteen (14) calendar days or sooner;

(j) have the right to participate in the development of their care plan/ISP;

(k) have the right to choose a doctor, pharmacist and other health care provider(s);

(l) have the right to participate in medical treatment decisions and formulate advance directives such as living wills and powers of attorney;

(m) have the right to keep and use personal possessions without loss or damage;

(n) have the right to manage and control their personal finances;

(o) have the right to freely organize and participate in a resident association that may recommend changes in the facility's policies, services and management;

(p) shall not be required to work for the facility; and

(q) are protected from unjustified room transfers or discharge.

**E.** The resident's rights shall not be restricted unless this restriction is for the health and safety of the resident,

agreed to by the resident or the resident's surrogate decision maker and outlined in the resident's individual service plan.

[7.8.2.33 NMAC - Rp, 7.8.2.34 NMAC, 01/15/2010]

#### **7.8.2.34 CUSTODIAL DRUG**

**PERMITS:** A facility with two (2) or more residents that is licensed pursuant to this rule and that assists with self-administration or safeguards medications for residents shall have a current custodial drug permit issued by the state board of pharmacy.

**A. Procurement, labeling and storage.** The facility shall provide assistance to the resident in obtaining the necessary medications, treatment and medical supplies as identified in the ISP. The facility shall procure, label and store medications for residents who require assistance with self-administration of medication in compliance with state and federal laws.

(1) All medications, including non-prescription drugs, shall be stored in a locked compartment or in a locked room, as approved by the board of pharmacy and the key shall be in the care of the administrator or designee.

(2) Internal medication shall be kept separate from external medications. Drugs to be taken by mouth shall be separated from all other delivery forms.

(3) A separate, locked refrigerator shall be provided by the facility for medications. The refrigerator temperature shall be kept in compliance with the state board of pharmacy requirements for medications.

(4) All medications, including non-prescription medications, shall be stored in separate compartments for each resident and all medications shall be labeled with the resident's name.

(5) A resident may be permitted to keep his or her own medication in a locked compartment in his or her room for self-administration, if the physician's order deems it appropriate.

(6) The facility shall not require the residents to purchase medications from any particular pharmacy.

(7) Medical gases (oxygen) and equipment used for the administration of inhalation therapy and for resuscitative purposes shall comply with the national fire protection association (NFPA) 99.

(8) A proof of use record shall be maintained separately for each schedule II through IV drug (controlled substances). The proof of use sheet shall document:

(a) the type and strength of the schedule II through IV drugs;

(b) the date and time staff assisted with self-administration;

(c) the resident's name;

(d) the prescriber's name;

(e) the dose;

(f) the signature of the person assisting with delivery of the medication; and

(g) the balance of medication remaining.

(9) Any remaining medication discontinued by a physician's order, or upon discharge or death of the resident shall be inventoried and moved to a separate locked storage container. Such discontinued medications shall be destroyed upon the next quarterly visit by the consulting pharmacist in accordance with 16.19.11.10 NMAC.

(10) The record of medication destruction shall be signed by the administrator or designee and the pharmacist and shall be kept on file at the facility.

**B. Consulting pharmacist.** The facility shall maintain records demonstrating that the consulting pharmacist provides the following oversight and guidance.

(1) Reviews the medication regimen as needed, but at least quarterly/ every three (3) months, to determine that all medications and records are accurate and current. All irregularities shall be reported to the administrator of the facility and these irregularities shall be resolved by the administrator within seventy-two (72) hours.

(2) A system of records of receipt and disposition of all drugs in sufficient detail to enable an accurate reconciliation.

(3) Consultation shall be provided on all aspects of pharmacy services in the facility, including reference information regarding side effects and, when needed, physician consultation in cases involving the use of psychotropic medications.

(4) The consulting pharmacist will be responsible for assuring that the facility meets all requirements for storage, labeling, destruction and documentation of medications as required by the state board of pharmacy, 16.19.11.10 NMAC and 7.8.2 NMAC.

[7.8.2.34 NMAC - Rp, 7.8.2.35 NMAC, 01/15/2010]

#### **7.8.2.35 MEDICATIONS:**

Administration of medications or staff assistance with self-administration of medications shall be in accordance with state and federal laws. No medications, including over-the-counter medications, PRN (when needed) medications, or treatment shall be started, changed or discontinued by the facility without an order from the physician, physician assistant or nurse practitioner and with entry into the resident's record.

**A.** State board of nursing licensed or certified health care professionals are responsible for the administration of medications. Administration may only be performed by these individuals.

**B.** Facility staff may assist



a resident with the self-administration of medications if written consent by the resident is given to the administrator of the facility or the administrator's designee. If the resident is incapable of giving consent, the surrogate decision maker named in accordance with New Mexico law may give written consent for assistance with self-administration of medications. All staff that assist with self-administration of medications shall have successfully completed a state approved assistance with self-administration of medication training program or be licensed or certified by the state board of nursing.

**C. PRN (pro re nada) medication.**

(1) Physician or physician extender's orders for PRN medications shall clearly indicate the circumstances in which they are to be used, the number of doses that may be given in a 24-hour period and indicate under what circumstances the primary care practitioner (PCP) is to be notified.

(2) The utilization of PRN medications shall be reviewed routinely. Frequent or escalating use of PRN medications shall be reported to the PCP.

**D.** Only a licensed nurse (RN or LPN) shall administer any medications or conduct any invasive procedures provided by the following routes: intravenous (IV), subcutaneous (SQ), intramuscular (IM), vaginal or rectal. Only a licensed nurse shall administer non-premixed nebulizer treatments.

**E.** The facility shall have medication reference material that contains information relating to drug interactions and side effects on the premises. Staff that assist in the self-administration of medications shall know interactions or possible side effects that might occur.

**F.** Medications prescribed for one resident shall not be used for another resident.

**G. Medication assistance record (MAR).** For residents who are not independent and require assistance with self administration, the facility shall have a MAR that documents the details of the residents' medication, including PRN and over-the-counter medication that is assisted with self-administration by qualified staff or administered to the resident by licensed or certified staff. The information in the MAR shall include:

- (1) the resident's name;
- (2) any known allergies to medication that the resident has;
- (3) the name of the resident's PCP or the prescriber of the medication;
- (4) the diagnosis or reason for the medication;
- (5) the name of the medication, including the drug product brand name and the generic name;
- (6) notation if the medication is a

schedule II-IV drug;

- (7) the dosage of the medication;
- (8) the strength of the medication;
- (9) the frequency or how often the medication is to be taken or given;
- (10) the route of delivery for the medication (mouth, eye, ear, other);
- (11) the method of delivery for the medication (pills, drops, IM injection, other);
- (12) the date that the medication was started or discontinued;
- (13) any change in the medication order;
- (14) pre-medication information (i.e., pulse, respiration, blood pressure, blood sugar) as required by the medication order;

(15) the date and time that the medication is self-administered, administered with assistance or is administered;

(16) the initials and signature of the person assisting with or administering the medication;

(17) the desired results obtained from or problems encountered with the medication (pain relieved, allergic reaction, etc.);

(18) any refused dose of medication;

(19) any missed dose of medication; and

(20) any medication error.

**H.** No medication shall be stopped or started without specific orders from the primary care physician.

**I.** If a resident refuses to take a prescribed medication, it shall be documented and the facility shall report it to the prescriber.

**J.** A suspected adverse reaction to a medication shall be documented on the MAR and reported immediately to the PCP and the resident's surrogate decision maker. If applicable, emergency medical treatment shall be arranged. Documentation of the event shall be kept in the resident's record.

**K.** Prescription medication, other than blister packs and unit dose containers, shall be kept in the original container with a pharmacy label that includes the following:

- (1) the resident's name;
- (2) the name of the medication;
- (3) the date that the prescription was issued;
- (4) the prescribed dosage and the instructions for administration of the medication; and
- (5) the name and title of the prescriber.

**L.** Any medication that is removed from the pharmacy container or blister pack shall be given immediately and documented by the staff that assisted with the medication delivery.

**M.** The facility shall report all medication errors to the physician, documentation of medication errors and the prescriber's response shall be kept in the resident's record.

**N.** The facility shall develop and follow a written policy for unused, outdated, or recalled medications kept in the facility in accordance with 16.19.11.10 NMAC.

[7.8.2.35 NMAC - Rp, 7.8.2.36 NMAC, 01/15/2010]

**7.8.2.36 NUTRITION :**

The facility shall provide planned and nutritionally balanced meals from the basic food groups in accordance with the "recommended daily dietary allowance" of the American dietetic association, the food and nutrition board of the national research council, or the national academy of sciences. Meals shall meet the nutritional needs of the residents in accordance with the "2005 USDA dietary guidelines for Americans." Vending machines shall not be considered a source of snacks.

**A. Dietary services policies and procedures.** The facility will develop and implement written policies and procedures that are maintained on the premises and that govern the following requirements.

(1) **Meal service.** The facility shall:

(a) serve at least three (3) meals or their equivalent each day at regular times with no more than sixteen (16) hours between the evening meal and morning meal with snacks freely available;

(b) provide snacks of nourishing quality and post on the daily menu;

(c) develop menus enjoyed by the residents and served at normal intervals appropriate to the residents' preferences;

(d) post the weekly menu, including snacks where residents and families are able to view it; posted menus shall be followed and any substitution shall be of equivalent nutritional value and recorded on the posted menu; identical menus shall not be used within a one (1) week cycle;

(e) have special menus or meal items following guidelines from the resident's physician for residents who have medically prescribed special diets;

(f) serve all residents in a dining room except for residents with a temporary illness, or with documented specific personal preference to have meals in their room;

(g) allow sufficient time for meals to enable residents to eat at a leisurely pace and to socialize; and

(h) contact the resident's PCP within forty-eight (48) hours if a resident consistently refuses to eat.

(2) **Staff in-service training.** The facility shall provide an in-service



training program for staff that are involved in food preparation at orientation and at least annually and that includes:

- (a) instruction in proper food storage;
- (b) preparation and serving food;
- (c) safety in food handling;
- (d) appropriate personal hygiene; and
- (e) infectious and communicable disease control.

#### **B. Dietary records.**

The facility shall maintain the following documentation onsite:

- (1) a systematic record of all menus and revisions, including snacks, for a minimum of thirty (30) calendar days;
- (2) a systematic record of therapeutic diets as prescribed by a PCP;
- (3) a copy of the most recent licensing inspection and for facilities with 10 or more residents, a copy of the New Mexico environment department inspection with notations made by the facility of action taken to comply with recommendations or citations; and
- (4) a daily log of the recorded temperatures for all facility refrigerators, freezers and steam tables maintained and available for inspection for thirty (30) calendar days.

**C. Clean and sanitary conditions.** All practices shall be in accordance with the standards of the state environment department, pursuant to 7.6.2 NMAC.

##### **(1) Kitchen sanitation.**

(a) Equipment and work areas shall be clean and in good repair. Surfaces with which food or beverages come into contact shall be of smooth, impervious material free of open seams, not readily corrodible and easily accessible for cleaning.

(b) Utensils shall be stored in a clean, dry place protected from contamination.

(c) The walls, ceiling and floors of all rooms that food or drink is stored, prepared or served shall be kept clean and in good repair.

##### **(2) Washing and sanitizing kitchenware.**

(a) All reusable tableware and kitchenware shall be cleaned in accordance with procedures that include separate steps for prewashing, washing, rinsing and sanitizing.

(b) Proper dishwashing procedures and techniques shall be utilized and understood by the dishwashing staff.

(c) Periodic monitoring of the operation of the detergent dispenser, washing, rinsing and sanitizing temperatures shall be performed and documented.

(d) When a dishwashing machine is utilized, the cleanliness of the machine, its jets and its thermostatic controls shall be

monitored and documented by the facility. A monthly log of the recorded temperature of the dishwasher shall be maintained in the facility and available for inspection.

(3) Sinks for hand washing shall include hot and cold running water, hand-washing soap and disposable towels.

(4) All garbage and kitchen refuse that is not disposed of through a garbage disposal unit shall be kept in watertight containers with close-fitting covers and disposed of daily in a safe and sanitary manner.

(5) Cooks and food handlers shall wear clean outer garments and hair nets or caps and shall keep their hands clean at all times when engaged in handling food, drink, utensils or equipment in accordance with the local health authority. Disposable gloves shall be used in accordance with the local health authority.

#### **D. Food management.**

The facility shall store, prepare, distribute and serve food under sanitary conditions and in accordance with the regulations governing food establishments of local health authority having jurisdiction, 7.6.2 NMAC.

(1) The facility shall ensure that a minimum of a three (3) calendar day supply of perishables and a five (5) calendar day supply of non-perishables or canned foods is available for the residents.

(2) The facility refrigerator and freezer shall have an accurate thermometer which reads within or not more than plus or minus three (3) degrees fahrenheit of the required temperature, located in the warmest section of the refrigerator and freezer and shall be accessible and easily read.

(a) The temperature of the refrigerator shall be thirty-five (35) - forty-one (41) degrees fahrenheit.

(b) Freezer temperatures shall be maintained at zero (0) degrees fahrenheit or below.

(3) Refrigerators and freezers shall be kept clean and sanitary at all times. Food stored in refrigerators and freezers shall be covered, dated and labeled. Unused leftover food shall be discarded after three (3) calendar days.

(4) Steam tables, hot food tables, slow cookers, crock pots and other hot food holding devices shall not be used in heating or reheating food. Hot food temperatures shall be checked periodically to insure that a minimum of one hundred forty (140) degrees fahrenheit is maintained.

(5) Medication, biological specimens, poisons, detergents and cleaning supplies shall not be kept in the same storage areas used for storage of foods. Medications shall not be stored in the refrigerator with food; an alternate refrigerator for medication shall be used pursuant to Subsection B of 7.6.2.8 NMAC.

(6) Canned or preserved foods

shall be procured from sources that process the food under regulated quality and sanitation controls. This does not preclude the use of local fresh produce. The facility shall not use home-canned foods.

(7) Dry or staple food items shall be stored at least six (6) inches off the floor in a ventilated room that is not subject to sewage, waste water back-flow or contamination by condensation, leakage, rodents or vermin.

(8) The facility shall ensure the following:

(a) all perishable food is refrigerated and the temperature is maintained no higher than forty-one (41) degrees fahrenheit;

(b) the temperature for all hot foods is maintained at one hundred forty (140) degrees fahrenheit; and

(c) all displayed or transported food is protected from environmental contamination and maintained at proper temperatures in clean containers, cabinets or serving carts.

#### **E. Milk.**

(1) Raw milk shall not be used.

(2) Condensed, evaporated, or dried milk products that are nationally recognized may be employed as "additives" in cooked food preparation but shall not be substituted or served to residents in place of milk.

**F. Collateral requirements.** Compliance with this rule does not relieve a facility from the responsibility of meeting more stringent municipal regulations, ordinances or other requirements of state or federal laws governing food service establishments. Local health authority having jurisdiction means municipal, county, state or federal agency(s) that have laws and regulations governing food establishments, liquid waste disposal, treatment facilities and private wells.

[7.8.2.36 NMAC - Rp, 7.8.2.37 NMAC, 01/15/2010]

#### **7.8.2.37 LAUNDRY SERVICES:**

##### **A. General requirements.**

The facility shall provide laundry services for the residents, either on the premises or through a commercial laundry and linen service.

(1) On-site laundry facilities shall be located in areas separate from the resident units and shall be provided with necessary washing and drying equipment.

(2) Soiled laundry shall be kept separate from clean laundry, unless the laundry facility is provided for resident use only.

(3) Staff shall handle, store, process and transport linens with care to prevent the spread of infectious and communicable disease.

(4) Soiled laundry shall not be stored in the kitchen or dining areas. The building design and layout shall ensure the separation of laundry room from kitchen and dining areas. An exterior route to the laundry room is not an acceptable alternative, unless it is completely enclosed.

(5) In new construction or newly licensed facilities with more than fifteen (15) residents, washers shall be in separate rooms from dryers. The rooms with washers shall have negative air pressure from the other facility rooms.

(6) All linens shall be changed as needed and at least weekly or when a new resident is to occupy the bed.

(7) The mattress pad, blankets and bedspread shall be laundered as needed and at least once per month or when a new resident is to occupy the bed.

(8) Bath linens consisting of hand towel, bath towel and washcloth shall be changed as needed and at least weekly.

(9) There shall be a clean, dry, well ventilated storage area provided for clean linen.

(10) Facility laundry supplies and cleaning supplies shall not be kept in the same storage areas used for the storage of foods and clean storage and shall be kept in a secured room or cabinet.

**B.** Residents may do their own laundry, if it is their preference and they are capable of doing so, or if it is part of their skill-building for independent living and is documented as part of their ISP.

[7.8.2.37 NMAC - Rp, 7.8.2.39 NMAC, 01/15/2010]

**7.8.2.38 HOUSEKEEPING SERVICES.** The facility shall maintain the interior and exterior of the facility in a safe, clean, orderly and attractive manner. The facility shall be free from offensive odors, safety hazards, insects and rodents and accumulations of dirt, rubbish and dust.

**A.** All common living areas and all bathrooms shall be cleaned as often as necessary to maintain a clean and sanitary environment.

**B.** Combustibles such as cleaning rags or flammable substances shall be stored in closed metal containers in approved areas that provide adequate ventilation. Combustibles shall be stored away from the food preparation areas and away from the resident rooms.

**C.** Poisonous or flammable substances shall not be stored in residential areas, food preparation areas or food storage areas. If hazardous chemicals are stored on the property, material safety data sheets shall be maintained and stored in the same area as the chemicals, pursuant to state environment department requirements, 11.5.2.9 NMAC. [7.8.2.38 NMAC - Rp, 7.8.2.39 NMAC, 01/15/2010]

**7.8.2.39 S I T E REQUIREMENTS:** The facility shall be located and maintained free from environmental and other factors that are detrimental to the residents and staff's health, safety or welfare. The facility site shall be designed and maintained to encourage outdoor activities by the residents.

[7.8.2.39 NMAC - Rp, 7.8.2.42 NMAC, 01/15/2010]

**7.8.2.40 CAPACITY OF BUILDING(S):** No facility shall house more residents than the maximum bed capacity for which it is licensed.

**A.** Each individual building containing resident activities, services or sleeping rooms on the premises shall be separately licensed.

**B.** Buildings on the grounds of the licensed facility and all rooms within the licensed buildings that are used by the residents of the facility shall be subject to inspection for health and safety standards.

**C.** All facilities shall comply with the state building code and fire codes, pursuant to 14.7 NMAC.

(1) Facilities with sixteen (16) residents or fewer are classified as "group R."

(2) Facilities with more than sixteen (16) residents are classified as "group I-1."

(3) Facilities with more than five (5) residents who are not capable of self-preservation are classified as "group I-2."

**D.** Facilities shall provide separate sleeping quarters for male and female residents unless they are married or the arrangement is consensual.

[7.8.2.40 NMAC - Rp, 7.8.2.40 NMAC, 01/15/2010]

**7.8.2.41 BUILDING CONSTRUCTION:** All building construction shall be based upon the facility occupancy in accordance with the state building code and fire codes, pursuant to 14.7 NMAC.

**A. New facilities.** All new facilities, relocated into existing building(s) or remodeled facilities shall conform to the current edition of the state building code, accessibility code, mechanical code, plumbing code, fire code and the electrical code.

(1) With regard to building height, allowable area or construction type, the state building code shall prevail.

(2) Minimum construction requirements shall comply with all applicable state building codes.

(3) A facility may share a building with another health care facility licensed by the department or other suitable facility with prior approval from the licensing authority.

(4) Where there are conflicts between the requirements in the codes and the provisions of this rule, the most restrictive condition shall apply.

**B. Access for persons with disabilities.** Facilities with four (4) or more residents shall provide accessibility to residents with disabilities in accordance with the state building code and the American Disabilities Act. Areas of specific concern are as follows:

(1) the main entry into the facility and all required exits shall provide access to persons with disabilities;

(2) the building shall allow access to persons with disabilities to all common areas;

(3) at least one bedroom, for every eight (8) residents, shall have a door clearance of thirty-six (36) inches for access by persons with disabilities;

(4) at least one toilet and bathing facility, for every eight (8) residents, shall have a minimum door clearance of thirty-six (36) inches for access by persons with disabilities; this toilet and bathing room shall provide a minimum sixty (60) inch diameter clear space to accommodate the turning radius of a wheelchair;

(5) when ramps are used, each ramp shall have a minimum slope of twelve (12) inches horizontal run for each one (1) inch of vertical rise; ramps exceeding a six (6) inch rise shall be provided with handrails on both sides of the ramp;

(6) landings at doorways shall have a level area, at a minimum of five (5) feet by five (5) feet, to provide clear space for wheelchair maneuvering;

(7) parking spaces shall provide access aisles with a minimum width of sixty (60) inches and ninety-six (96) inches for van parking; a minimum of one (1) van-accessible parking space with a minimum width of ninety-six (96) inches shall be provided;

(8) an accessible route for persons with disabilities from the parking area to the main entrance(s) shall be provided; and

(9) changes in elevation of one half inch (1/2 inch) or greater shall be sloped to a minimum of twelve (12) inches horizontal run for each one (1) inch of vertical rise.

**C. Construction drawings.** Prior to commencement of all new construction, remodeling, relocations, additions or renovations to existing buildings; the facility shall submit preliminary plans and final construction drawings with specifications to the licensing authority for review and approval.

(1) Building plans and specifications shall be submitted and approved by the department when:

(a) construction for a new facility is proposed;

(b) a building that has not

previously licensed as a facility is proposed as a location for a facility;

(c) any renovation that increases the number of beds is proposed;

(d) any addition to an existing structure is proposed; or

(e) any renovation to the existing structure is proposed, regardless of the size of the facility.

(2) The codes that are in effect at the time of the submittal of building plans shall be the codes used through the end of the project.

(3) Drawings and specifications shall be prepared for the architectural, structural, mechanical and electrical branches of work for each construction project and shall include the following:

(a) **the site plan(s)** showing property lines, finish grade, location of existing and proposed structures, roadways, walks, utilities and parking areas;

(b) **the floor plan(s)** showing scale drawings of typical and special rooms, indicating all fixed and movable equipment and major items of furniture;

(c) **the separate life safety plans** showing the fire and smoke compartment(s), all means of egress and exit markings, exits and travel distances, dimensions of compartments and calculation and tabulation of exit units, all fire and smoke walls shall be graphically coded;

(d) the exterior elevation of each facade;

(e) the typical sections throughout the building;

(f) the schedule of finishes;

(g) the schedule of doors and windows;

(h) the roof plans; and

(i) the building code analysis.

(4) **For facilities with more than fifteen (15) residents:** architectural drawings shall be stamped, signed and dated by a licensed architect registered in New Mexico. In addition to items listed in section (3) above, the drawings shall include the following:

(a) the building code analysis; and

(b) when an elevator is required, the details and dimensions of the elevator.

(5) **Structural drawings** shall include the following:

(a) a certification that all structural design and work are in compliance with all applicable local codes;

(b) the plans of foundations, floors, roofs and intermediate levels that show a complete design with sizes, sections and the relative location of the various members; and

(c) the schedules of beams, girders and columns.

(6) **Mechanical drawings** shall include the following:

(a) a certification that all

mechanical work and equipment are in compliance with all applicable local codes and laws and that all materials are listed by recognized testing laboratories;

(b) the water supply, sewage and heating, ventilation and air conditioning piping systems;

(c) the heating, ventilating, HVAC piping and air conditioning systems with all related piping and auxiliaries, if any, to provide a satisfactory installation;

(d) the water supply, sewage and drainage with all lines, risers, catch-basins, manholes and cleanouts clearly indicated as to location, size, capacities and location and dimensions of septic tank and disposal field;

(e) the sprinkler head layout; and

(f) the graphic coding (with a legend) to show supply, return and exhaust systems.

(7) **Electrical drawings** shall include the following:

(a) a certification that all electrical work and equipment are in compliance with all applicable local codes and laws and that all materials are currently listed by recognized testing laboratories;

(b) all electrical wiring, outlets, riser diagrams, switches, special electrical connections, electrical service entrance with service switches, service feeders and characteristics of the light and power current and transformers when located within the building;

(c) a fixture legend; and

(d) a graphic coding (with a legend) to show all items on emergency power.

(8) Include additional information as needed and requested by the licensing authority.

(9) Final working drawings and specifications shall be accurately dimensioned and include all necessary explanatory notes, schedules, legends and have all rooms labeled. The working drawings and specifications shall be complete and adequate for contract purposes.

(10) One set of final plans shall be submitted to the licensing authority for review and approval prior to the commencing of construction. All construction shall be executed in accordance with the approved final plans and specifications.

(11) Review and approval of building plans by the licensing authority does not eliminate responsibility of the applicant to comply with all applicable laws, rules and ordinances.

(12) The final approval of building plans and specifications shall be acknowledged in writing by the licensing authority.

(13) The approved building plans shall be kept at the facility and readily available at all times.

**D. Fire resistance.**

Required building construction and fire resistance shall be in accordance with the state building code and the fire code. Facilities with nine (9) or more residents shall be protected throughout by an approved automatic fire protection (sprinkler) system.

**E. Prohibition of mobile homes.** For facilities with four (4) or more residents, trailers and mobile homes shall not be used.

**F. Construction.** Construction shall commence within one hundred eighty (180) calendar days of the date of receipt of approval (unless a written extension is requested by the facility and approved by department). This approval shall in no way permit or authorize any omission or deviation from the requirements of any restrictions, laws, ordinances, codes or standards of any regulatory agency.

[7.8.2.41 NMAC - Rp, 7.8.2.41 NMAC, 01/15/2010]

**7.8.2.42 MAINTENANCE OF BUILDING AND GROUNDS:** The building(s) shall be maintained in good repair at all times. Such maintenance shall include, but is not limited to, the following areas:

**A. Storage areas/grounds.** Storage areas and grounds shall be maintained in a safe, sanitary and presentable condition at all times. Storage areas and grounds shall be kept free from accumulation of refuse, weeds, discarded furniture, old newspapers or other items that create a fire hazard.

**B. Floors.** Floors shall be maintained stable, firm and free of tripping hazards.

[7.8.2.42 NMAC - Rp, 7.8.2.43 NMAC, 01/15/2010]

**7.8.2.43 HAZARDOUS AREAS:** Hazardous areas include: Fuel fired equipment rooms (not a typical residential kitchen), bulk laundries or laundry rooms with more than one hundred (100) sq. ft., storage rooms more than fifty (50) sq. ft. but less than one hundred (100) sq. ft. not storing combustibles, storage rooms with more than one hundred (100) sq. ft. storing combustibles, chemical storage rooms with more than fifty (50) sq. ft., garages and maintenance shops/rooms.

**A.** Hazardous areas on the same floor as, and in or abutting, a primary means of escape or a sleeping room shall be protected by either:

(1) an enclosure of at least one hour fire rating with self-closing or automatic closing on smoke detection fire doors having a three-quarter (3/4) hour rating; or

(2) an automatic fire protection (sprinkler) and separation of hazardous area with self-closing doors or doors with automatic-closing on smoke detection; or

(3) other hazardous areas shall be



enclosed with walls with at least a twenty (20) minute fire rating and doors equivalent to one and three-quarter (1 3/4) inch solid bonded wood core, operated by self-closures or automatic closing on smoke detection.

**B. Boiler, furnace or fuel fired water heater rooms.** For facilities with four (4) or more residents: all boiler, furnace or fuel fired water heater rooms shall be protected from other parts of the building by construction having a fire resistance rating of not less than one (1) hour. Doors to these rooms shall be one and three-quarter (1-3/4) inch solid core.

[7.8.2.43 NMAC - Rp, 7.8.2.44 NMAC, 01/15/2010]

#### **7.8.2.44 HEATING, AIR-CONDITIONING AND VENTILATION:**

**A.** Heating, air-conditioning, piping, boilers and ventilation equipment shall be furnished, installed and maintained to meet all requirements of current state and local mechanical, electrical and construction codes. All facilities shall have documentation that fuel-fire heating systems have been checked, tested and maintained annually by qualified personnel.

**B.** The heating method used by the facility shall provide a minimum temperature of seventy (70) degrees fahrenheit, measured at three (3) feet above the floor, in all rooms used by the residents.

**C.** No open-face gas or electric heater nor unprotected single shell gas or electric heating device shall be used for heating the facility. Portable heating units shall not be used for heating the facility. All heating appliances shall be permanently anchored and kept away from flammables such as curtains, bedcovering, trash containers, or clothing. No heating appliance shall be located where the unit or wiring is a tripping hazard or presents danger from electrical shock.

**D.** Fireplaces and open flame heating shall not be utilized in sleeping rooms.

**E.** Gas fired water heaters shall not be located in sleeping rooms, bathrooms, or rooms opening into sleeping rooms.

**F.** The facility shall be adequately ventilated at all times to provide fresh air and the control of unpleasant odors by either mechanical or natural means.

**G.** All openings to the outside air used for ventilation shall be screened for the control of insects and rodents. Screen doors shall be equipped with self-closing devices.

**H.** The facility shall have a system for maintaining the residents comfort during periods of hot weather. Fans shall not be located where the unit or wiring is a tripping hazard. Fans shall be provided with protective shields when there is a potential

for contact by any individual.

[7.8.2.44 NMAC - Rp, 7.8.2.45 NMAC, 01/15/2010]

**7.8.2.45 WATER:** Pursuant to the current New Mexico drinking water requirements, 7.6.2.9 NMAC.

**A.** The water supply system shall be constructed, protected, operated and maintained in conformance with applicable local, state and federal laws, ordinances and regulations.

**B** Where a facility is supplied by its own water system, the system shall meet the sampling and construction requirement of a non-community water system as defined by the current New Mexico drinking water requirements.

**C.** All water that is not piped into the facility directly from a public water supply system shall be from an approved source, disinfected, transported, handled, stored and dispensed in a sanitary manner. Such water shall be prevented from entering potable water systems by appropriate cross connection and backflow prevention devices.

**D.** Hot and cold running water, under pressure shall be provided in all areas where food is prepared and where equipment and utensils are washed, sinks, lavatories, washrooms and laundries.

**E.** The hot water temperature that is accessible to residents shall be maintained at a minimum of ninety-five (95) degrees fahrenheit and a maximum of one hundred ten (110) degrees fahrenheit. Hot water in excess of one hundred ten (110) degrees fahrenheit is permitted in kitchen and laundry areas, provided that residents are supervised in order to prevent injury.

[7.8.2.45 NMAC - Rp, 7.8.2.46 NMAC, 01/15/2010]

#### **7.8.2.46 SEWAGE AND WASTE DISPOSAL:**

**A.** All sewage and liquid wastes shall be disposed of into a municipal sewage system where such facilities are available.

**B.** Where a municipal sewage system is not available, the system that is used shall be inspected and approved by the state environmental authority, pursuant to 20.7.3 NMAC, prior to licensure.

**C.** Where municipal or community garbage collection and disposal service are not available, the method of collection, storage and disposal of garbage used by the facility shall be environmentally safe and sound and not create an objectionable environment and be in accordance with state environmental authority, pursuant to 20.9.2 NMAC.

[7.8.2.46 NMAC - Rp, 7.8.2.47 NMAC, 01/15/2010]

#### **7.8.2.47 LIGHTING AND LIGHTING FIXTURES:**

**A.** All areas of the facility, including storerooms, stairways, hallways, and interior and exterior entrances shall be lighted to make the area clearly visible.

**B.** Exits, exit-access ways and other areas used at night by residents and staff shall be illuminated by night lights or other continuous lighting.

**C.** Lighting fixtures shall be selected and located to accommodate the needs and activities of the residents, with the comfort and convenience of the residents in mind.

**D.** Lamps and lighting fixtures shall be shaded to prevent glare to the eyes of residents and staff, and protected from accidental breakage or shattering.

**E.** Facilities with four (4) or more residents shall have emergency lighting to light exit passageways and the exterior area near the exits that activates automatically upon disruption of electrical service.

**F.** Facilities with three (3) or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.

[7.8.2.47 NMAC - Rp, 7.8.2.48 NMAC, 01/15/2010]

#### **7.8.2.48 ELECTRICAL SYSTEM:**

**A.** All fuse and breaker boxes shall be labeled to indicate the area of the facility to which each fuse or circuit breaker provides service.

**B.** All staff personnel of the facility shall know the location of the electrical disconnect switch and how to operate it in case of emergency.

**C.** Electrical cords and appliances shall be U/L approved.

(1) Electrical cords shall be replaced as soon as they show wear.

(2) Extension cords shall not be used. **The use of a multi-socket united laboratories approved (U/L APPROVED) surge protector with integrated circuit breaker no greater than six (6) feet in length is permitted for the intended purpose and not as an extension cord.**

[7.8.2.48 NMAC - Rp, 7.8.2.49 NMAC, 01/15/2010]

#### **7.8.2.49 DOORS:**

**A.** No door in any means of egress shall be locked against egress when the building is occupied.

(1) Exit doors may be provided with a night latch, dead bolt, or security chain, provided these devices are operable from the inside, by any occupant, without the use of a key, tool, or any special knowledge and are mounted at a height not to exceed

forty-eight (48) inches above the finished floor.

(2) If locks are not readily operable by all occupants within the building, the locks must: 1) unlock upon activation of the fire detection or sprinkler system and 2) unlock upon loss of power in the facility. Prior to installing such locking devices, the facility shall have written approval from the building, fire and licensing authorities having jurisdiction.

**B.** All exit doors shall have a minimum width of thirty-six (36) inches.

(1) Facilities with a capacity of ten (10) or more residents shall have exit doors leading to the outside of the facility that open outward.

(2) Facilities with a capacity of fifty (50) or more residents must provide panic hardware at the exit doors.

(3) No door or path of travel to a means of egress shall be less than twenty-eight (28) inches wide.

**C.** All resident sleeping room doors must be at least one and three-quarters (1 3/4) inch solid core construction.

**D.** Bathroom doors may be twenty-four (24) inches wide. Facilities with four (4) or more residents shall have at least one bathroom for every eight (8) residents with a door clearance of thirty-six (36) inches for access by persons with disabilities.

**E.** Locks on doors to toilet rooms and bathrooms shall be capable of release from the outside.

**F.** All doors shall readily open from the inside.

**G.** Doors shall be provided for all resident sleeping rooms, all restrooms and all bathrooms.

[7.8.2.49 NMAC - Rp, 7.8.2.50 NMAC, 01/15/2010]

#### **7.8.2.50 EXITS:**

**A.** The facility shall have at least two (2) approved exits, that do not involve windows and which are remote from each other.

**B.** Facilities with ten (10) or more residents shall have each exit clearly marked with lighted signs having letters at least six (6) inches high and at least three-quarters (3/4) of an inch wide. Exit signs shall be visible at all times.

**C.** Facilities with three (3) or fewer residents shall have a flashlight that is immediately available for use in lieu of electrically interconnected emergency lighting.

**D.** Exits shall be clear of obstructions at all times.

**E.** Exits, exit paths, or means of egress shall not pass through hazardous areas, garages, storerooms, closets, utility rooms, laundry rooms, bedrooms, or spaces subject to locking.

**F.** For facilities with four (4) or more residents, sliding doors are not acceptable as a required exit. EXCEPTION: Assisted living facilities with three (3) or fewer residents may have sliding doors as required exits.

**G.** When the yard gate(s) is part of the exit access and is locked, the gate shall be connected to the fire protection system and release upon activation of the fire/smoke system or shall have the ability to be unlocked at the gate site.

[7.8.2.50 NMAC - Rp, 7.8.2.51 NMAC, 01/15/2010]

#### **7.8.2.51 SEPARATION OF SLEEPING ROOMS:**

**A.** All sleeping rooms shall be separated from escape route corridors by walls and doors that are smoke resistant. There shall be no passages, louvers, or transfer grills penetrating the wall to other spaces in the building.

**B.** All sleeping rooms shall be provided latches suitable for keeping the doors closed.

**C.** Every sleeping room shall have access to a primary means of escape that provides a path to the exterior, without exposure to unprotected vertical openings. Where sleeping rooms are above or below the level of exit discharge, the primary means of escape shall be:

- (1) an enclosed interior stair; or
- (2) an exterior stair; or
- (3) a horizontal exit; or
- (4) an existing approved fire escape stair.

**D.** Every sleeping room shall provide a secondary means of escape which may be any one of the following:

- (1) a door leading directly to the outside, at or to grade level;

- (2) a door, stairway, passage or hall remote from the primary escape and to the exterior; or

- (3) an outside window or door, operable without tools from the inside with a minimum clear opening measured twenty (20) inches wide, measured twenty-four (24) inches high; the distance of the bottom of the opening from the floor is a maximum of forty-four (44) inches; this means of escape is acceptable if the bottom of the window is no more than twenty (20) feet above grade or is accessible by fire department rescue apparatus, approved by the authority having jurisdiction, or it opens onto an exterior balcony; and

- (4) bars, grills, grates or similar devices that are installed on emergency escape or rescue windows or doors shall be equipped with release mechanisms which are operable from the inside without the use of a key or special knowledge or effort.

**E.** Stairways and other vertical openings between floors shall be

enclosed with construction to provide a smoke and fire resistance rating of not less than twenty (20) minutes. Open stairways between floors shall not be permitted.

[7.8.2.51 NMAC - Rp, 7.8.2.52 NMAC, 01/15/2010]

#### **7.8.2.52 CORRIDORS:**

**A.** Corridors in an existing building shall have a minimum width of thirty-six (36) inches. Corridors in newly constructed facilities shall have a minimum width of forty-four (44) inches.

**B.** Corridors shall have a clear ceiling height of not less than seven (7) feet measured to the lowest projection from the ceiling.

**C.** Corridors shall be maintained clear and free of obstructions at all times.

**D.** The floors of corridors and hallways shall be waterproof, greaseproof, smooth, slip-resistant and durable.

[7.8.2.52 NMAC - Rp, 7.8.2.53 NMAC, 01/15/2010]

#### **7.8.2.53 MINIMUM ROOM DIMENSIONS:**

**A.** All habitable rooms in a facility shall have a ceiling height of not less than seven feet six inches (7' 6"). Kitchens, halls, bathrooms and toilet compartments shall have a ceiling height of not less than seven (7) feet.

**B.** Any room with sloped ceiling where any portion of the room is less than seven (7) feet in height is subject to review and approval or disapproval by the licensing authority.

[7.8.2.53 NMAC - Rp, 7.8.2.54 NMAC, 01/15/2010]

#### **7.8.2.54 RESIDENT ROOMS:**

**A.** The facility's bed capacity shall not exceed the capacity approved by the licensing authority.

**B.** Each resident room shall have an outside room with a window. The area of the outdoor window shall be at least one tenth (1/10th) of the floor area of the room.

**C.** Resident rooms shall not be less than seven (7) feet wide in any horizontal dimension.

**D.** There must be no through traffic in resident rooms. Resident rooms must connect directly to other internal common areas of the facility.

**E.** The window shades, drapes, curtains, or blinds in the resident rooms shall be in good repair and of flame-retardant materials.

**F.** Resident rooms may be private or semi-private. Semi-private rooms may not house more than two (2) residents.

- (1) Private rooms shall have a

minimum of one hundred (100) square feet of floor area. The closet and locker area shall not be counted as part of the available floor space.

(2) Semi-private rooms shall have a minimum of eighty (80) square feet of floor area for each bed and shall be furnished in such a manner that the room is not crowded and passage out of the room is not obstructed. A separate closet for each resident shall be provided. The closet and locker area shall not be counted as part of the available floor space. The beds shall be spaced at least three (3) feet apart.

**G.** If a resident chooses not to bring their own furnishings to the facility; each resident room shall be provided with, as a minimum, the following furnishings per resident:

(1) a bed that shall be at least thirty-six (36) inches wide, of sturdy construction and in good repair;

(2) each bed shall be provided with a clean, comfortable mattress of at least four (4) inches in thickness, which is waterproof, or protected with a waterproof covering and a mattress pad;

(3) each bed shall be provided with a clean, comfortable pillow;

(4) each bed shall be provided with a pillow case, two (2) clean sheets, blankets and a bedspread appropriate for the weather and the climate;

(5) an individual closet or closet area with a clothes rack for hanging clothes and shelves or drawers that are accessible to the resident;

(6) a dresser with drawers;

(7) a bedside table or desk;

(8) a chair;

(9) a reading lamp; and

(10) a mirror.

[7.8.2.54 NMAC - Rp, 7.8.2.55 NMAC, 01/15/2010]

#### **7.8.2.55 TOILET AND BATHING FACILITIES:**

Toilet and bathing facilities shall be located appropriately to meet the needs of residents.

**A.** A minimum of one (1) toilet, one (1) sink and one (1) bathing unit shall be provided for every eight (8) residents or fraction thereof.

(1) The facility shall provide at least one tub and one shower or combination unit to allow for residents bathing preference.

(2) Facilities with four (4) or more residents shall provide a handicap accessible bathroom for every thirty (30) residents that allows for a bathing preference.

**B.** Facilities with four (4) or more residents must comply with accessibility requirements for the disabled.

**C.** Toilet, sink and bathing facilities shall be readily available to the residents. No passage through a resident room by another resident to reach a

toilet, bathing unit or sink facility shall be permitted.

**D.** The combination type tub and shower shall be permitted.

**E.** A facility with four (4) or more residents that has live-in staff shall provide a separate toilet, sink and bathing facility for staff.

**F.** Toilets, tubs and showers shall be provided with grab bars.

**G.** Tubs and showers shall have a slip resistant surface.

**H.** The floors of bathrooms and bathing facilities shall have smooth, waterproof and slip-resistant surfaces.

**I.** Toilet paper and soap shall be provided in each toilet room.

**J.** The use of a common towel shall be prohibited.

**K.** Bathrooms and lavatories shall be cleaned as often as necessary to maintain a clean and sanitary condition.

[7.8.2.55 NMAC - Rp, 7.8.2.56 NMAC, 01/15/2010]

**7.8.2.56 LIVING OR MULTIPURPOSE ROOM:** The facility shall provide a minimum of forty (40) square feet per resident for common living, dining and social spaces.

**A.** The facility shall have a living or multipurpose room for the use of the residents. Such rooms shall be provided with reading lamps, tables and chairs or couches. These furnishings shall be well constructed, comfortable and in good repair.

**B.** The living room or multipurpose rooms shall be provided with supplies to meet the varied interests and needs of the residents.

**C.** Each activity room shall have a window area of at least one tenth (1/10) of the floor area with a minimum of at least ten (10) square feet.

[7.8.2.56 NMAC - Rp, 7.8.2.57 NMAC, 01/15/2010]

#### **7.8.2.57 MEETING ROOM:**

The facility shall have adequate meeting rooms and office space for use by staff and the interdisciplinary care team. Other rooms may serve as meeting rooms, provided resident confidentiality is maintained.

[7.8.2.57 NMAC - N, 01/15/2010]

#### **7.8.2.58 DINING AREA:**

**A.** A dining area shall be provided for meals. Each dining area shall be designed and have furnishings to meet the individual needs of the residents.

(1) Facilities with sixty (60) or fewer residents shall have tables and chairs in the dining area to accommodate the total number of residents in one sitting.

(2) Facilities with more than sixty

(60) residents shall provide seating for at least sixty (60) residents at one time, but may serve meals in shifts to accommodate the total capacity of the facility.

(a) No more than three (3) shifts are permitted for each meal.

(b) Facilities with more than sixty (60) residents and serving meals in shifts must have other social areas for residents to congregate during the meal service.

(c) All seating arrangements during meals shall allow clear access to the exits.

**B.** The living or multipurpose room may be used as a dining area if the dining area portion does not exceed fifty (50) percent of the available floor space and still allows a comfortable arrangement of the necessary furnishings for a living area.

[7.8.2.58 NMAC - Rp, 7.8.2.58 NMAC, 01/15/2010]

#### **7.8.2.59 WINDOWS:**

**A.** Each sleeping room shall be provided with an exterior window.

(1) The window shall be operable, screened and have a clear operable area of 5.7 square feet minimum; measured twenty (20) inches wide minimum and measured twenty-four (24) inches high minimum.

(2) The top of the window sill shall not be more than forty-four (44) inches above the finished floor.

**B.** Screens shall be provided on all operable windows.

**C.** The proposed use of bars, grilles, grates or similar devices shall be reviewed and approved by the licensing authority prior to installation.

**D.** Sleeping rooms, living rooms, activity room areas and dining room areas shall have a window area of at least one tenth (1/10) of the floor area with a minimum of ten (10) square feet.

[7.8.2.59 NMAC - Rp, 7.8.2.52 NMAC, 01/15/2010]

#### **7.8.2.60 FIRE CLEARANCE AND INSPECTIONS:**

**A.** Written documentation of a facility's compliance with applicable fire prevention codes shall be obtained from the state fire marshal's office or the fire prevention authority with jurisdiction and shall be submitted to the licensing authority prior to the issuance of an initial license.

**B.** The facility shall request an annual fire inspection from the local fire prevention authorities. If the policy of the local fire department does not provide an annual inspection of the facility, the facility will document the date the request was made and to whom and then contact licensing authorities. If the local fire prevention authorities do make annual inspections, a copy of the latest inspection must be kept on file in the facility.



[7.8.2.60 NMAC - Rp, 7.8.2.59 NMAC, 01/15/2010]

**7.8.2.61 FIRE ALARMS, SMOKE DETECTORS AND OTHER EQUIPMENT:**

**A. Fire alarm system.**

Facilities with four (4) or more residents shall have a manual fire alarm system. The manual fire alarm shall be inspected and approved in writing by the fire authority with jurisdiction.

**B. Smoke and heat detection.** Approved smoke detectors shall be installed on each floor that when activated provides an alarm which is audible in all sleeping areas. Areas of assembly, such as the dining and living room(s) must also be provided with smoke detectors.

(1) Detectors shall be powered by the house electrical service and have battery back up.

(2) Construction of new facilities or facilities remodeling or replacing existing smoke detectors shall provide detectors in common living areas and in each sleeping room.

(3) Smoke detectors shall be installed in corridors at no more than thirty (30) foot spacing.

(4) Heat detectors shall be installed in all kitchens and also powered by the house electrical service.

[7.8.2.61 NMAC - Rp, 7.8.2.60 NMAC, 01/15/2010]

**7.8.2.62 AUTOMATIC FIRE PROTECTION (SPRINKLER) SYSTEM:**

Facilities with nine (9) or more residents shall have an automatic fire protection (sprinkler) system. The system shall be in accordance with NFPA 13 or NFPA 13D or its subsequent replacement as applicable.

[7.8.2.62 NMAC - Rp, 7.8.2.61 NMAC, 01/15/2010]

**7.8.2.63 FIRE EXTINGUISHERS:** Fire extinguisher(s) must be located in the facility, as approved by the state fire marshal or the fire prevention authority with jurisdiction.

**A.** Facilities must as a minimum have two (2) 2A10BC fire extinguishers:

(1) one (1) extinguisher located in the kitchen or food preparation area;

(2) one (1) extinguisher centrally located in the facility;

(3) all fire extinguishers shall be inspected yearly and recharged as needed; all fire extinguishers must be tagged noting the date of the inspection;

(4) the maximum distance between fire extinguishers shall be fifty (50) feet.

**B.** Fire extinguishers, alarm systems, automatic detection

equipment and other fire fighting equipment shall be properly maintained and inspected as recommended by the manufacturer, state fire marshal, or the local fire authority.

[7.8.2.63 NMAC - Rp, 7.8.2.62 NMAC, 01/15/2010]

**7.8.2.64 FIRE SAFETY EQUIVALENCY SYSTEM RATING:**

In facilities without a sprinkler system; the fire safety equivalency system shall be conducted at least annually. The facility shall maintain an evacuation rating score of prompt when a fire safety equivalency system is required.

[7.8.2.64 NMAC - Rp, 7.8.2.19 NMAC, 01/15/2010]

**7.8.2.65 FIRE DRILLS:** All facilities shall conduct monthly fire drills which are to be documented.

**A.** There shall be at least one (1) documented fire drill per month and at a minimum, one documented fire drill each eight (8) hours (day, evening, night) per quarter that employs the use of the fire alarm system or the detector system in the facility.

**B.** A record of the monthly fire drills shall be maintained on file in the facility and readily available. Fire drill records shall show:

(1) the date of the drill;

(2) the time of the drill;

(3) the number of staff participating in the drill;

(4) any problem noted during the drill; and

(5) the evacuation time in total minutes.

**C.** If applicable, the local fire department may be requested to supervise and participate in fire drills.

[7.8.2.65 NMAC - Rp, 7.8.2.63 NMAC, 01/15/2010]

**7.8.2.66 STAFF AND RESIDENT FIRE AND SAFETY TRAINING:**

**A.** All staff of the facility shall know the location and the proper use of fire extinguishers and the other procedures to be followed in case of fire or other emergencies. The facility should request the local fire prevention authority to give periodic instructions in the use of fire prevention and techniques of evacuation.

**B.** Facility staff shall be instructed as part of their duties to constantly strive to detect and eliminate potential safety hazards, such as loose handrails, frayed electrical cords, blocked exits or exit-ways and any other condition which could cause burns, falls, or other personal injury to the residents or staff.

**C.** Each new resident admitted to the facility shall be given an orientation tour of the facility to include the location of the exits, fire extinguishers and

telephones and shall be instructed in the actions to be taken in case of fire or other emergencies.

**D. Fire drill procedures.**

The facility must conduct at least one (1) fire drill each month.

(1) Fire drills shall be held at different times of the day, evening and night.

(2) The fire alarm system or detector system in the facility shall be used in the fire drills. During the night, the fire drill alarm may be silenced.

(3) During the fire drills, emphasis shall be placed upon orderly evacuation under proper discipline rather than upon speed.

(4) A record of the conducted fire drills shall be maintained on file in the facility. The record shall show the date and time of the drill, the number of personnel participating in the drill, any problem(s) noted during the drill and the evacuation time in total minutes.

(5) The local fire department may be requested to supervise and participate in the fire drills.

[7.8.2.66 NMAC - Rp, 7.8.2.63 NMAC, 01/15/2010]

**7.8.2.67 SMOKING:**

**A.** Smoking by residents and staff shall take place only in supervised areas designated by the facility and approved by the state fire marshal or local fire prevention authorities. Smoking shall not be allowed in a kitchen or food preparation area.

**B.** All designated smoking areas shall be provided with suitable ashtrays that are not made of combustible material.

**C.** Residents shall not be permitted to smoke in bed.

**D.** Smoking shall not be permitted where oxygen is in use, is present or is stored.

[7.8.2.67 NMAC - Rp, 7.8.2.64 NMAC, 01/15/2010]

**7.8.2.68 HOSPICE:** An assisted living facility that provides or coordinates hospice care and services shall meet the requirements in this section, in addition to the rules applicable to all assisted living facilities, 7.8.2 NMAC.

**A. Definitions:** in addition to the requirements for all assisted living facilities pursuant to "DEFINITIONS," 7.8.2.7 NMAC, the following definitions shall also apply.

(1) **"Hospice agency"** means an organization, company, for-profit or non-profit corporation or any other entity which provides a coordinated program of palliative and supportive services for physical, psychological, social and the option of spiritual care of terminally ill people and their families. The services are provided

by a medically directed interdisciplinary team in the person's home and the agency is required to be licensed pursuant to 7.12 NMAC.

(2) **"Hospice care"** means a focus on palliative, rather than curative care. The goal of the plan of care is to help the patient live as comfortably as possible, with emphasis on eliminating or decreasing pain and other uncomfortable symptoms.

(3) **"Licensed assisted living provider"** means a facility that provides twenty-four (24) hour assisted living and is licensed by the department of health.

(4) **"Hospice services"** means a program of palliative and supportive services which provides physical, psychological, social and spiritual care for terminally ill patients and their family members.

(5) **"Care coordination requirements"** means a written document that outlines the care and services to be provided by the hospice agency for assisted living residents that require hospice services.

(6) **"Palliative care"** means a form of medical care or treatment that is intended to reduce the severity of disease symptoms, rather than to reverse progression of the disease itself or provide a cure.

(7) **"Terminally ill"** means a diagnosis by a physician for a patient with a prognosis of six (6) months or less to live.

(8) **"Visit notes"** means the documentation of the services provided for hospice residents and includes ongoing care coordination.

**B. Employee training and support.** A facility that provides hospice services shall provide the following education and training for employees who assist with providing these services:

(1) provide a minimum of six (6) hours per year of palliative/hospice care training, which includes one (1) hour specific to the hospice resident's ISP, in addition to the basic staff education requirements pursuant to 7.8.2.17 NMAC; and

(2) offer an ongoing employee psychological support program for end of life care issues.

**C. Individual service plan (ISP) requirements.**

(1) Each resident who receives hospice services shall be provided the necessary palliative care to meet the individual resident's needs as outlined in the ISP and shall include one (1) hour of training specific to the resident for all direct care staff.

(2) The assisted living facility, in coordination with the hospice provider, shall create an ISP that identifies how the resident's needs are met and includes the following:

(a) the requirements set forth in the "Individual Service Plan," 7.8.2.26 NMAC, and "Exceptions to admission, readmission

and retention," Subsection C of 7.8.2.20 NMAC;

(b) what services are to be provided;

(c) who will provide the services;

(d) how the services will be provided;

(e) a delineation of the role(s) of the hospice provider and the assisted living facility in the ISP process;

(f) documentation (visit notes) of the care and services that are provided with the signature of the person who provided the care and services; and

(g) a list of the current medications or biologicals that the resident receives and who is authorized to administer them.

(3) Medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance or administered by the following individuals:

(a) a physician;

(b) a physician extender (PA or NP);

(c) a licensed nurse (RN or LPN);

(d) the resident if their PCP has approved it;

(e) family or family designee; and

(f) any other individual in accordance with applicable state and local laws.

#### **D. Care coordination.**

(1) The assisted living facility shall be knowledgeable with regard to the hospice requirements pursuant to 7.12 NMAC and ensure that the hospice agency is well informed with regard to the assisted living provisions pursuant to Subsection C of 7.8.2.20 NMAC.

(2) The assisted living facility shall hold a team meeting prior to accepting or retaining a hospice resident in accordance with "Exceptions to admission, readmission and retention," Subsection C of 7.8.2.20 NMAC.

(3) Upon admission of a resident into hospice care, the assisted living facility shall designate a section of the resident's record for hospice documentation.

(a) The facility shall provide individual records for each resident.

(b) The hospice agency shall leave documentation at the facility in the designated section of the resident's record.

(4) The assisted living facility shall provide the resident and family or surrogate decision maker with information on palliative care and shall support the resident's freedom of choice with regard to decisions.

(5) Hospice services shall be available twenty-four (24) hours a day, seven (7) days a week for hospice residents, families and facility staff and may include continuous nursing care for hospice residents

as needed. These services shall be delivered in accordance with the resident's individual service plan (ISP) and pursuant to 7.8.2 26 NMAC.

(6) The assisted living facility shall ensure the coordination of services with the hospice agency.

(a) The resident's individual service plan (ISP) shall be updated with significant changes in the resident's condition and care needs.

(b) The assisted living facility shall receive information and communication from the hospice staff at each visit.

(i) The information shall include the resident status and any changes in the ISP (i.e., medication changes, etc.).

(ii) The information shall be in the form of a verbal report to the assisted living facility staff and also in the form of written documentation.

(c) The assisted living facility or the family/resident shall reserve the right to schedule care conferences as the needs of the resident and family dictate. The care conferences shall include all care team members.

(d) Concerns that arise with regard to the delivery of services from either the assisted living facility or the hospice agency shall first be addressed with the facility administrator and the hospice agency administrator.

(i) The process may be informal or formal depending on the nature of the issue.

(ii) If an issue can not be resolved or if there is an immediate danger to the resident the appropriate authority shall be notified.

#### **E. Additional provisions.**

An assisted living facility that provides or coordinates hospice care and services shall make additional provisions for the following requirements:

(1) **individual services and care:** each resident receiving hospice services shall be provided the necessary palliative procedures to meet individual needs as defined in the ISP;

#### **(2) private visiting space:**

(a) physical space for private family visits;

(b) accommodations for family members to remain with the patient throughout the night; and

(c) accommodations for family privacy after a resident's death.

**F. Medicare and medicaid restrictions.** Assisted living facilities shall not accept a resident considered "hospice general inpatient" which would be billable to medicare or medicaid because the facility will not qualify for payment by medicare or medicaid.

[7.8.2.68 NMAC - N, 01/15/2010]



**7.8.2.69 MEMORY CARE UNITS:** An assisted living facility that provides a memory care unit to serve residents with dementia shall comply with the provisions of subsection A-J below in addition to the rules applicable to all assisted living facilities, 7.8.2 NMAC.

**A. Additional definitions:** The following definitions, in addition to those in 7.8.2.7 NMAC, shall apply.

(1) **“Alzheimer’s”** means a brain disorder that destroys brain cells, causing problems with memory, thinking and behavior that are severe enough to affect work, lifelong hobbies or social life. Alzheimer’s gets progressively worse and is fatal.

(2) **“Care coordination agreement requirement”** means a written document that outlines the care and services that are provided by other outside agencies for assisted living residents that require additional care and services.

(3) **“Dementia”** means loss of memory and other mental abilities severe enough to interfere with daily life. It is caused by changes in the brain.

(4) **“Memory care unit”** means an assisted living facility or part of or an assisted living facility that provides added security, enhanced programming and staffing appropriate for residents with a diagnosis of dementia, Alzheimer’s disease or other related disorders causing memory impairments and for residents whose functional needs require a specialized program.

(5) **“Secured environment”** means locked (secured/monitored) doors/fences that restrict access to the public way for residents who require a secure unit.

**B. Care coordination requirement.** An assisted living facility that accepts residents with memory issues shall determine which additional services and care requirements are relevant to the resident and disease process.

(1) The medical diagnosis and ISP shall be utilized in the determination of the need for additional services.

(2) The assisted living facility shall ensure the coordination of services and shall have evidence of an agreement of care coordination for all services provided in the facility by an outside health care provider.

**C. Employee training.** In addition to the training requirements for all assisted living facilities, pursuant to 7.8.2.17 NMAC, all employees assisting in providing care for memory unit residents shall have a minimum of twelve (12) hours of training per year related to dementia, Alzheimer’s disease, or other pertinent information.

**D. Individual service plan (ISP).** An assisted living facility that admits memory care unit residents shall create an ISP in coordination with the resident’s

primary care practitioner, in compliance with the requirements outlined in “Individual Service Plan,” 7.8.2.26 NMAC, pursuant to a team meeting as described in “Exceptions to admission, readmission and retention,” Subsection C of 7.8.2.20 NMAC, and which ensures the following criteria:

(1) identification of the resident’s needs specific to the memory care unit and the services that are provided; each memory unit resident shall receive the services necessary to meet the individual resident’s needs;

(2) medications shall be self-administered, self-administered with assistance by an individual that has completed a state approved program in medication assistance or administered by the following individuals:

- (a) a physician;
- (b) a physician extender (PA or NP);
- (c) a licensed nurse (RN or LPN);
- (d) the resident if their PCP has approved it;
- (e) family or family designee; and
- (f) any other individual in accordance with applicable state and local laws.

**E. Assessments and reevaluations.**

(1) An assessment shall be completed by a registered nurse or a physician extender within fifteen (15) days prior to admission. When emergency placement is warranted the fifteen (15) day assessment shall be waived and the assessment shall be completed within five (5) days after admission.

(a) The resident shall have a medical evaluation and documentation by a physician, physician’s assistant or a nurse practitioner within six (6) months of admission.

(b) The pre-admission assessment shall include written findings, an evaluation of less restrictive alternatives and the basis for the admission to the secured environment. The written documentation shall include a diagnosis from the resident’s PCP of Alzheimer’s disease or other dementia and the need for the resident to reside in a memory care unit.

(c) Only those residents who require a secured environment placement or whose needs can be met by the facility, as determined by the assessment prior to admission or on review of the individual service plan (ISP), shall be admitted.

(2) A re-evaluation must be completed every six (6) months and when there is a significant change in the medical or physical condition of the resident that warrants intervention or different care needs, or when the resident becomes a danger to self or others, to determine whether the resident’s stay in the assisted living facility

memory care unit is still appropriate.

**F. Documentation in the resident’s record.** In addition to the required documentation pursuant to 7.8.2.21 NMAC, the following information shall be documented in the resident’s record:

(1) the physician’s diagnosis for admission to a secure environment or a memory care unit;

(2) the pre-admission assessment; and

(3) the re-evaluation(s).

**G. Secured environment.**

(1) Memory care unit residents may require a secure environment for their safety. A secured environment is any locked (secured/monitored) area in which doors and fences restrict access to the public way. These include but are not limited to:

- (a) double alarm systems;
- (b) gates connected to the fire alarm; and
- (c) tab alarms for residents at risk for elopement.

(2) In addition to the interior common areas required by this rule, the facility shall provide a safe and secure outdoor area for the year round use by the residents.

(a) Fencing or other enclosures shall prevent elopement and protect the safety and security of the residents.

(b) Residents shall be able to independently access the outdoor areas.

(3) Locked areas shall have an access code or key which facility employees shall have available on their person or on the locking unit itself at all times.

**H. Resident rights.** In addition to the requirements pursuant to 7.8.2.32 NMAC, the following shall apply:

(1) the resident’s rights may be limited as required by their condition and as identified in the ISP;

(2) the resident who believes that he or she has been inappropriately admitted to the secured environment may request the facility in contact the resident’s legal guardian, or an advocate such as the ombudsman or the primary care practitioner; upon request, the facility shall assist the resident in making such contact.

**I. Disclosure to residents.**

A facility that operates a secured environment shall disclose to the resident and the resident’s legal representative, if applicable and prior to the resident’s admission to the facility, that the facility operates a secured environment.

(1) The disclosure shall include information about the types of resident diagnosis or behaviors that the facility provides services for and for which the staff are trained to provide care for.

(2) The disclosure shall include information about the care, services and the type of secured environment that the facility

and trained staff provide.

**J. Staffing.** The facility shall provide the sufficient number of trained staff members to meet the additional needs of the residents in the secured environment. There must be at least one (1) trained staff member awake and in attendance in the secured environment at all times.  
[7.8.2.69 NMAC - N, 01/15/2010]

**7.8.2.70 INCORPORATED AND RELATED RULES AND CODES:** The facilities that are subject to this rule are also subject to other rules, codes and standards that may, from time to time, be amended. This includes the following:

**A.** Health Facility Licensure Fees and Procedures, New Mexico Department of Health, 7.1.7 NMAC.

**B.** Health Facility Sanctions and Civil Monetary Penalties, New Mexico Department of Health, 7.1.8 NMAC.

**C.** Adjudicatory Hearings for Licensed Facilities, New Mexico Department of Health, 7.1.2 NMAC.

**D.** Caregiver's Criminal History Screening Requirements, 7.1.9 NMAC.

**E.** Employee Abuse Registry 7.1.12 NMAC.

**F.** Incident Reporting, Intake Processing and Training Requirements 7.1.13 NMAC.

[7.8.2.70 NMAC - N, 01/15/2010]

#### **History of 7.8.2 NMAC:**

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records state records center and archives:

HSSD 72-1, New Mexico Licensing Regulations and Standards for Boarding Homes, filed 05-26-72.

HSSD 76-6, Adult Residential Shelter Care Homes, Regulations and Standards, filed 09-24-76.

HED 80-2A (HSD), Regulations for Community Residential Facilities for Developmentally Disabled Individuals, filed 09-26-80.

HED 86-3 (HSD), Regulations Governing Residential Shelter Care and Boarding Home Facilities for Adults, filed 07-11-86.

HED 90-1 (PHD), Regulations Governing Residential Shelter Care and Boarding Home Facilities for Adults, filed 01/11/90.

#### **History of Repealed Material:**

7.8.2 NMAC, Requirements for Adult Residential Care Facilities (filed 08/01/00) repealed 01/15/2010.

#### **Other History:**

HED 90-1 (PHD), Regulations Governing Residential Shelter Care and Boarding Home Facilities for Adults (filed 01/11/90)

was reformatted, renumbered, amended and replaced by 7 NMAC 8.2, Requirements for Adult Residential Care Facilities, effective 04/07/97.

7 NMAC 8.2, Requirements for Adult Residential Care Facilities (filed 02/14/97) was reformatted, renumbered, amended and replaced by 7.8.2 NMAC, Requirements for Adult Residential Care Facilities, effective 08/31/00.

7.8.2 NMAC, Requirements for Adult Residential Care Facilities (filed 08/01/00) was replaced by 7.8.2 NMAC, Assisted Living Facilities for Adults, effective 01/15/2010.

### **NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION**

This is an emergency repeal and replace of 8.50.107 NMAC, Establishment of Paternity, filed May 14, 2001. It is replaced by 8.50.107 NMAC, Determination of Parentage, effective January 1, 2010.

This is an emergency repeal and replace of 8.50.108 NMAC, Establishment of Support Order, filed May 14, 2001. It is replaced by 8.50.108 NMAC, Establishment and Modification of Support Order, effective January 1, 2010.

### **NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION**

#### **TITLE 8 SOCIAL SERVICES CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM PART 107 DETERMINATION OF PARENTAGE**

**8.50.107.1 ISSUING AGENCY:** New Mexico Human Services Department - Child Support Enforcement Division  
[8.50.107.1 NMAC - Rp/E, 8.50.107.1 NMAC, 1/1/10]

**8.50.107.2 SCOPE:** To the general public. For use by the department's employees and recipients of IV-D services.  
[8.50.107.2 NMAC - Rp/E, 8.50.107.2 NMAC, 1/1/10]

**8.50.107.3 STATUTORY AUTHORITY:** Public Assistance Act, NMSA 1978, Section 27-2-27. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).  
[8.50.107.3 NMAC - Rp/E, 8.50.107.3 NMAC, 1/1/10]

**8.50.107.4 DURATION:** Permanent.

[8.50.107.4 NMAC - Rp/E, 8.50.107.4 NMAC, 1/1/10]

**8.50.107.5 EFFECTIVE DATE:** January 1, 2010, unless a later date is cited at the end of a section.

[8.50.107.5 NMAC - Rp/E, 8.50.107.5 NMAC, 1/1/10]

**8.50.107.6 OBJECTIVE:** To provide regulations for the establishment of parentage in title IV-D cases in accordance with federal and state law and regulations.  
[8.50.107.6 NMAC - Rp/E, 8.50.107.6 NMAC, 1/1/10]

**8.50.107.7 DEFINITIONS:** [RESERVED]  
[See 8.50.100.7 NMAC]

**8.50.107.8 DETERMINATION OF PARENTAGE:** A determination of parentage is necessary for the establishment of child support. The IV-D agency extends full faith and credit to a determination of parentage made by another state, whether established through voluntary acknowledgment or through administrative or judicial process. Alleged fathers may initiate parentage actions through the IV-D agency. The IV-D agency may petition a court of competent jurisdiction to establish parentage so long as the dependant child is still under the age of majority.

**A.** Federal time-frames and requirements for establishment of parentage. The IV-D agency shall establish an order for support or complete service of process necessary to commence proceedings to establish a support order and, if necessary, parentage (or document unsuccessful attempts to serve process) within ninety calendar days of locating the alleged father or non-custodial parent. (45 CFR Section 303.4(d)).

**B.** The IV-D agency is not required to establish parentage or pursue genetic testing in any case involving incest or rape, or in any case in which legal proceedings for adoption are pending, or if, in the opinion of the IV-D agency, it would not be in the best interests of the child.

**C.** The IV-D agency may identify and use laboratories which perform, at reasonable cost, legally and medically acceptable genetic tests that tend to identify the biological parent or exclude the alleged biological parent. The IV-D agency may make available a list of such laboratories to appropriate courts and law enforcement officials, and to the public upon request.

**D.** The IV-D agency may seek entry of a default order by the court or administrative authority in a parentage case according to state law and rules of procedure

regarding default orders.

E. The IV-D agency may seek to establish maternity in compliance with the New Mexico Uniform Parentage Act, as appropriate.

F. The IV-D agency will not initiate an action to rescind or disestablish parentage.

G. If a child in a IV-D case has an acknowledged, presumed, or an adjudicated father as defined within the New Mexico Uniform Parentage Act, then parentage has been determined and the IV-D agency will pursue the establishment of support on behalf of or against the parent, as appropriate.

[8.50.107.8 NMAC - Rp/E, 8.50.107.8 NMAC, 1/1/10]

#### **8.50.107.9 P A R E N T A G E INVOLVING MINOR FATHERS AND MOTHERS:**

If the biological parent is under the age of emancipation, and is not otherwise emancipated by law, the IV-D agency will take measures to establish parentage and support, as appropriate. If a biological parent is a minor, his or her parent, legal guardian, or attorney who has entered an appearance on behalf of the minor biological parent may be present at all meetings or discussions between the minor biological parent and the representatives of the IV-D agency. The IV-D agency will seek to establish parentage. If the alleged minor non-custodial parent is employed, the IV-D agency will pursue guideline support. Any order or stipulation will include a requirement that the minor non-custodial parent will notify the IV-D agency of his or her employment and educational status on a regular basis. In uncontested cases, the IV-D agency may seek the concurrence of either the minor biological parent's parent(s), legal guardian, or attorney. In contested cases, the minor biological parent(s) may request the court to appoint a guardian ad litem. Any legal notices or pleading prepared following the appointment of the guardian ad litem will be sent in accordance with the rules of civil procedure.

[8.50.107.9 NMAC - Rp/E, 8.50.107.9 NMAC, 1/1/10]

#### **8.50.107.10 DETERMINATION OF PARENTAGE THROUGH VOLUNTARY ACKNOWLEDGMENT OF PATERNITY:**

State and federal laws provide for voluntary acknowledgment of paternity after the birth of a child. A man is determined to be the natural father of a child if he and the mother acknowledge parentage by filing a written acknowledgment with the vital statistics bureau of the public health division of the department of health, in accordance with the requirements of Article 3 of the New Mexico Uniform Parentage Act.

[8.50.107.10 NMAC - Rp/E, 8.50.107.10 NMAC, 1/1/10]

#### **8.50.107.11 LONG ARM STATUTE CASES:**

A. The IV-D agency will use the long arm statute as appropriate to exercise jurisdiction over a non-custodial parent residing in another state pursuant to NMSA 1978 Section 40-6A-201.

B. Genetic testing may be used in long arm statute cases in the establishment of parentage. New Mexico shall advance the costs associated with the testing in which the state initiated long arm statute actions. The IV-D agency shall seek reimbursement for the advancement of the costs pursuant to the genetic testing section below.

[8.50.107.11 NMAC - Rp/E, 8.50.107.11 NMAC, 1/1/10]

#### **8.50.107.12 GENETIC TESTING:**

A. The IV-D agency provides genetic testing services, as appropriate. The IV-D agency will not provide genetic testing services when parentage has already been adjudicated unless ordered by a court of competent jurisdiction to do so. The IV-D agency will seek the admission into evidence, for purposes of establishing parentage, the results of a genetic test that are performed by a laboratory contracted with the IV-D agency to provide this specific service, unless the results are otherwise stipulated to by the parties. Any party to a IV-D case may seek genetic testing outside of the IV-D agency, at his or her own expense and obtain a genetic test and report in compliance with NMSA 1978, Sections 40-11A-503 to 504. The IV-D agency will not present or introduce into evidence the results of a genetic test report obtained through a laboratory not contracted with the IV-D agency.

B. The IV-D agency may charge any individual who is not a recipient of state aid for the cost of genetic testing in accordance with the fee schedule in 8.50.125 NMAC; however, if parentage is established and genetic tests were performed, the IV-D agency must attempt to obtain a judgment for the costs of the genetic tests from the party who denied parentage or, at the state option, from each party in accordance with the fee schedule in 8.50.125 NMAC.

[8.50.107.12 NMAC - Rp/E, 8.50.107.12 NMAC, 1/1/10]

#### **8.50.107.13 JUDGMENTS AND ORDERS IN PARENTAGE CASES:**

The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes. The IV-D agency will seek the following orders, as appropriate:

A. an order adjudicating

parentage in accordance with the New Mexico Uniform Parentage Act, and

B. after parentage has been adjudicated, the establishment of child and medical support for the minor child(ren).

[8.50.107.13 NMAC - Rp/E, 8.50.107.14 NMAC, 1/1/10]

#### **History of 8.50.107 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: ISD CSEB 501.1100, State and Local Requirements, filed 6/23/80.

ISD CSEB 551.0000, Procedures for the Establishment of Paternity, filed 6/23/80.

ISD CSEB 555.0000, Blood Tests, filed 6/23/80.

#### **NMAC History:**

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, filed 12/30/94.

#### **History of Repealed Material:**

8 NMAC 5.CSE, Child Support Enforcement, filed 12/30/94 - Repealed effective 5/31/2001.

8.50.107NMAC, Establishment of Paternity, filed 5/14/2001 - Repealed effective 1/1/2010.

### **NEW MEXICO HUMAN SERVICES DEPARTMENT CHILD SUPPORT ENFORCEMENT DIVISION**

#### **TITLE 8 SOCIAL SERVICES CHAPTER 50 CHILD SUPPORT ENFORCEMENT PROGRAM PART 108 ESTABLISHMENT AND MODIFICATION OF SUPPORT ORDER**

#### **8.50.108.1 ISSUING AGENCY:**

New Mexico Human Services Department - Child Support Enforcement Division

[8.50.108.1 NMAC - Rp/E, 8.50.108.1 NMAC, 1/1/10]

**8.50.108.2 SCOPE:** To the general public. For use by the department's employees and recipients of IV-D services.

[8.50.108.2 NMAC - Rp/E, 8.50.108.2 NMAC, 1/1/10]

#### **8.50.108.3 STATUTORY AUTHORITY:**

Public Assistance Act, NMSA 1978, Section 27-2-27. The human services department is designated as the single state agency for the enforcement of child and spousal support obligations pursuant to Title IV-D of the Social Security Act (42 USC 651 et. seq.).

[8.50.108.3 NMAC - Rp/E, 8.50.108.3 NMAC, 1/1/10]



**8.50.108.4 D U R A T I O N :**  
Permanent.  
[8.50.108.4 NMAC - Rp/E, 8.50.108.4 NMAC, 1/1/10]

**8.50.108.5 EFFECTIVE DATE:**  
January 1, 2010, unless a later date is cited at the end of a section.  
[8.50.108.5 NMAC - Rp/E, 8.50.108.5 NMAC, 1/1/10]

**8.50.108.6 OBJECTIVE:** To provide regulations for the establishment of support in title IV-D cases in accordance with federal and state law and regulations.  
[8.50.108.6 NMAC - Rp/E, 8.50.108.6 NMAC, 1/1/10]

**8.50.108.7 DEFINITIONS:**  
[RESERVED]  
[See 8.50.100.7 NMAC]

**8.50.108.8 ESTABLISHMENT OF SUPPORT ORDER:** If parentage has been determined, and there is no support order in existence, the IV-D agency will pursue the establishment of a support order, as appropriate. All support orders obtained by the IV-D agency shall include a provision requiring the parties to keep the IV-D agency informed of their current addresses, and if the party is a parent, to also provide the name and address of his or her current employer, whether the parent has access to medical insurance coverage at reasonable cost and, if so, the medical insurance policy information.

A. Immediate income withholding: The IV-D agency will request an income withholding provision in accordance with the Support Enforcement Act, NMSA 1978, Section 40-4A1 et seq. The IV-D agency will not agree to an exception to wage withholding, but will honor any court or administration order that waives or excepts wage withholding. All payments, whether paid through income withholding, direct withdrawal, or direct payment by the non-custodial parent should be paid through the IV-D agency. If the custodial party obtains an order on a IV-D case for direct payments to him or her, the IV-D agency will begin non-cooperation procedures in active IV-A cases and close cases with no public assistance history.

B. Persons and agencies the IV-D agency will assist to establish a support order:

- (1) parent;
- (2) legal guardian by court or administrative order;
- (3) legal custodian by court or administrative order;
- (4) IV-B or IV-E agency;
- (5) another IV-D agency, state, U.S. territory or county pursuant to the Uniform Interstate Family Support Act,

NMSA 1978, Section 40-6A-101 et seq.  
C. Public assistance: If a dependant child receives public assistance, the IV-D agency will pursue a support order against the non-custodial parent, unless the IV-D agency determines that the case involves rape, incest, or it would not be in the best interest of the child(ren). If neither parent has custody of the child, the IV-D agency will pursue a support order against both parents. If the custodian of the child receiving public assistance does not have legal standing to pursue support, the IV-D agency will seek to establish a support order solely in favor of the IV-D agency as reimbursement for public assistance benefits expended on behalf of the child(ren).  
[8.50.108.8 NMAC - Rp/E, 8.50.108.8 NMAC, 1/1/10]

**8.50.108.9 CHILD SUPPORT AWARD GUIDELINES:** The IV-D agency uses income information provided to the agency by the parties or other sources to apply the child support guidelines in NMSA 1978, Section 40-4-11.1. If exact income information is unavailable, the IV-D agency will seek to impute income to a party, as appropriate. A request for retroactive support by the IV-D agency will be either to the date of birth of the child, or twelve years, whichever is the shorter period. The custodial party may request a longer retroactive period in accordance with the law. The amount of retroactive support requested by the IV-D agency on its own behalf or for a custodial party will be in accordance with the child support guidelines or as otherwise stipulated to by the parties. Any deviations from the guidelines will be in accordance with NMSA 1978 Section 40-4-11.2.  
[8.50.108.9 NMAC - Rp/E, 8.50.108.9 NMAC, 1/1/10]

**8.50.108.10 D E F A U L T JUDGMENT:** The IV-D agency may seek entry of a default order by the court or administrative authority according to state law and rules of procedure regarding default orders.  
[8.50.108.10 NMAC - Rp/E, 8.50.108.10 NMAC, 1/1/10]

**8.50.108.11 F U R N I S H I N G CONSUMER REPORTS FOR CERTAIN PURPOSES RELATING TO CHILD SUPPORT:** Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) authorizes the release of information contained in a non-custodial parent's credit report to the New Mexico IV-D agency. The information obtained from the consumer reporting agency is to be used solely for the purpose of setting an initial or modified child support award.  
[8.50.108.11 NMAC - Rp/E, 8.50.108.11 NMAC, 1/1/10]

**8.50.108.12 MODIFICATION OF CHILD SUPPORT ORDERS:** Either party may request the IV-D agency to provide the service of requesting the modification of a support order. Applicable fees will be charged to the requesting party in compliance with 8.50.125.10 NMAC. The IV-D agency will not review a spousal support order for order for modification unless the custodial parent is currently receiving public assistance.  
[8.50.108.12 NMAC - Rp/E, 8.50.108.14 NMAC, 1/1/10]

**8.50.108.13 REVIEW AND ADJUSTMENT OF SUPPORT ORDERS:** The IV-D agency conducts a review for modification of support orders in the IV-D caseload three years from the effective date of the last support order. At the time of review, if the case is actively receiving public assistance, the IV-D agency must pursue a modification either upward or downward if its review indicates that there will be at least a twenty percent change from the current obligation of support. The review is conducted based on information provided by the parties and other sources that report income. Both parties are sent notice at the time of review to request current information from them regarding income, child care costs, medical expenses to include insurance, and any other appropriate expenses that are considered by the child support guidelines. Both parties are notified of the result of the review conducted by the IV-D agency. If the IV-D agency chooses not to pursue a modification, any party may independently pursue his or her own request for a modification of a support order.  
[8.50.108.13 NMAC - Rp/E, 8.50.108.15 NMAC, 1/1/10]

#### **History of 8.50.108 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: ISD CSEB 501.1100, State and Local Requirements, filed 6/23/80.

#### **NMAC History:**

8 NMAC 5.CSE.000 through 8 NMAC 5.CSE.970, filed 12/30/94.

#### **History of Repealed Material:**

8 NMAC 5.CSE, Child Support Enforcement, filed 12/30/94 - Repealed effective 5/31/2001.

8.50.108 NMAC, Establishment of Support Order, filed 5/14/2001 - Repealed effective 1/1/2010

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.150.110 NMAC, Section 8, effective January 15, 2010.

### 8.150.110.8 RIGHT TO APPLY:

A. Clients/applicants: Anyone has the right to apply for any benefits provided by ISD whether or not it appears that he/she will be eligible.

#### B. Outreach:

(1) HSD responsibilities: HSD conducts outreach regarding the LIHEAP program to eligible households, and particularly elderly and disabled households, through the ISD field offices and all of the offices and suboffices of the state's community action agencies. Additional outreach efforts to elderly and disabled households are made through workshops and conferences held by the state's agency on aging.

(2) Community action agency responsibility: HSD coordinates with the community action agencies to provide information and outreach services regarding LIHEAP and other energy-related assistance programs.

C. Barrier free policy: It is HSD's policy to make the application process for these households as barrier-free as possible. This includes:

(1) paperwork reduction and not requiring reverification by the household of information already available to HSD, such as SSI status;

(2) ease of access to physical locations where application may be made; and

(3) provision of additional assistance for any household or household member who requires it.

D. Annual benefit: Each eligible household will be issued one benefit each federal fiscal year. The benefit may be issued in one or multiple payments depending on the funding availability and the approval of the HSD secretary. Receipt of a LIHEAP benefit from any other LIHEAP administering entity (tribe, state or territory) funded by HHS during any federal fiscal year would prohibit the receipt of LIHEAP in New Mexico during that FFY.

E. Second application period: A second application period may be established under certain conditions at the direction of the HSD secretary. A second application period will be announced in the media. Situations which may justify a second application period include:

(1) funding levels are predicted to exceed allowable carryover of federal funds to the next federal fiscal year;

(2) emergency weather

circumstances.

[7-1-95, 11-1-95, 11-15-96, 10-15-98, 10-1-00; 8.150.110.8 NMAC - Rn, 8 NMAC 22.LHP.111 & A, 10-1-01; A, 01-15-10]

## NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an amendment to 8.150.524 NMAC, Section 9, effective January 15, 2010.

### 8.150.524.9 I N C O M E STANDARD:

Income guidelines for eligibility will be updated at the beginning of each federal fiscal year as required by federal statute. The guidelines will be effective for the entire federal fiscal year beginning October 1 and ending September 30. The income guidelines will be determined by the secretary of the human services department before the beginning of the new federal fiscal year. The gross monthly income guidelines maximum ~~[will be]~~ may be one of the allowable which includes 150% of the applicable federal poverty guidelines, 60% of the state median income or other income allowable by the appropriation. LIHEAP income guidelines are available from all human services department income support division offices, by writing to: Human Services Department LIHEAP [P-O Box 26507 Albuquerque NM 87125-6507] P.O. Box 12740 Albuquerque NM 87195-0740 or by contacting the income support division customer service desk at 1 800 283-4465 or New Mexico Relay at 1 800 659-8331. If you are disabled and need the guidelines in an alternative format, please ~~[make the request when you contact us]~~ notify HSD with a request. The income guidelines are also located on the HSD income support division web site at [<http://www.state.nm.us/hsd/isd.html>] <http://www.hsd.state.nm.us/isd/liheap.html>.

[11-15-96, 11-01-97, 10-15-98, 10-1-99, 10-1-00; 8.150.524.9 NMAC - Rn, 8 NMAC 22.LHP.524 & A, 10-1-01; A, 10-01-06; A, 01-15-10]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.510 NMAC, sections 11 and 13, which will be effective January 15, 2010.

### 8.200.510.11 C O M M U N I T Y SPOUSE RESOURCE ALLOWANCE

(CSRA): The CSRA standard varies based on when the applicant/recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal

medicaid application. If institutionalization began:

(A) Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CSRA is \$60,000.

(B) On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.

(C) On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.

(D) On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.

(E) On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.

(F) On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.

(G) On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.

(H) On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.

(I) On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.

(J) On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.

(K) On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.

(L) On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.

(M) On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.

(N) On or after January 1, 2002, the state minimum is \$31,290 and the federal maximum CSRA is \$89,280.

(O) On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

(P) On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

(Q) On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

(R) On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

(S) On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

(T) On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

(U) On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

(V) On or after January 1, 2010,

the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.11 NMAC - Rn, 8 NMAC 4.MAD.510.1 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08; A, 1-1-09; A, 1-15-10]

**8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:** Costs of care are based on the date of application registration.

<u>DATE</u>	<u>AVERAGE COST PER MONTH</u>
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$ 2,377 per month
E. Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month
H. Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
I. Jan. 1, 1998 - Dec 31, 1998	\$3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
K. Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
L. Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
M. Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
N. Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
O. Jan. 1, 2004 - Dec. 31, 2004	\$3,899 per month
P. Jan. 1, 2005 - Dec. 31, 2005	\$4,277 per month
Q. Jan. 1, 2006 - Dec. 31, 2006	\$4,541 per month
R. Jan. 1, 2007 - Dec. 31, 2007	\$4,551 per month
S. Jan. 1, 2008 - Dec. 31, 2008	\$4,821 per month
T. Jan. 1, 2009 - Dec. 31, 2009	\$5,037 per month
U. Jan. 1, 2010	\$5,269 per month

Any fraction of a month remaining when this calculation is completed is dropped.

[1-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99, 7-1-00; 8.200.510.13 NMAC - Rn, 8 NMAC 4.MAD.510.3 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10]

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

This is an amendment to 8.200.520 NMAC, sections 12, 13 and 20, which will be effective January 15, 2010

**8.200.520.12 COLA DISREGARD COMPUTATION**

<u>Current amt/cost of living</u>	<u>Benefit period</u>
<u>Current Title II amount=</u>	<u>Benefit before 1/10</u>
.....0	
<u>Benefit before 1/10=</u>	Benefit before 1/09
1.058	
<u>Benefit before 1/09=</u>	Benefit before 1/08
1.023	
<u>Benefit before 1/08 =</u>	Benefit before 1/07
1.033	
<u>Benefit before 1/07 =</u>	Benefit before 1/06
1.041	
<u>Benefit before 1/06 =</u>	Benefit before 1/05
1.027	
<u>Benefit before 1/05 =</u>	Benefit before 1/04
1.021	
<u>Benefit before 1/04 =</u>	Benefit before 1/03
1.014	
<u>Benefit before 1/03 =</u>	Benefit before 1/02
1.026	
<u>Benefit before 1/02 =</u>	Benefit before 1/01
1.035	
<u>Benefit before 1/01 =</u>	Benefit before 1/00
1.025	
<u>Benefit before 1/00 =</u>	Benefit before 1/99

1.013	
<u>Benefit before 1/99 =</u>	Benefit before 1/98
1.021	
<u>Benefit before 1/98 =</u>	Benefit before 1/97
1.029	
<u>Benefit before 1/97 =</u>	Benefit before 1/96
1.026	
<u>Benefit before 1/96 =</u>	Benefit before 1/95
1.028	
<u>Benefit before 1/95 =</u>	Benefit before 1/94
1.026	
<u>Benefit before 1/94 =</u>	Benefit before 1/93
1.030	
<u>Benefit before 1/93 =</u>	Benefit before 1/92
1.037	
<u>Benefit before 1/92 =</u>	Benefit before 1/91
1.054	
<u>Benefit before 1/91 =</u>	Benefit before 1/90
1.047	
<u>Benefit before 1/90 =</u>	Benefit before 1/89
1.040	
<u>Benefit before 1/89 =</u>	Benefit before 1/88
1.042	
<u>Benefit before 1/88 =</u>	Benefit before 1/87
1.013	
<u>Benefit before 1/87 =</u>	Benefit before 1/86
1.031	
<u>Benefit before 1/86 =</u>	Benefit before 1/85
1.035	
<u>Benefit before 1/85 =</u>	Benefit before 1/84
1.035	
<u>Benefit before 1/84 =</u>	Benefit before 7/82
1.074	
<u>Benefit before 7/82 =</u>	Benefit before 7/81
1.112	
<u>Benefit before 7/81 =</u>	Benefit before 7/80
1.143	
<u>Benefit before 7/80 =</u>	Benefit before 7/79
1.099	
<u>Benefit before 7/79 =</u>	Benefit before 7/78
1.065	
<u>Benefit before 7/78 =</u>	Benefit before 7/77
1.059	

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.12 NMAC - Rn, 8 NMAC 4.MAD.520.6 & A, 1-1-01; A, 1-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10]

#### 8.200.520.13 FEDERAL BENEFIT RATES

YEAR	Individual	Inst.	Indiv.	Couple	Inst.	Couple
	FBR	FBR	VTR	FBR	FBR	VTR
1/89 to 1/90	\$368	\$30	\$122.66	\$553	\$60	\$184.33
1/90 to 1/91	\$386	\$30	\$128.66	\$579	\$60	\$193.00
1/91 to 1/92	\$407	\$30	\$135.66	\$610	\$60	\$203.33
1/92 to 1/93	\$422	\$30	\$140.66	\$633	\$60	\$211.00
1/93 to 1/94	\$434	\$30	\$144.66	\$652	\$60	\$217.33
1/94 to 1/95	\$446	\$30	\$148.66	\$669	\$60	\$223.00
1/95 to 1/96	\$458	\$30	\$152.66	\$687	\$60	\$229.00
1/96 to 1/97	\$470	\$30	\$156.66	\$705	\$60	\$235.00
1/97 to 1/98	\$484	\$30	\$161.33	\$726	\$60	\$242.00
1/98 to 1/99	\$494	\$30	\$164.66	\$741	\$60	\$247.00
1/99 to 1/00	\$500	\$30	\$166.66	\$751	\$60	\$250.33
1/00 to 1/01	\$512	\$30	\$170.66	\$769	\$60	\$256.33
1/01 to 1/02	\$530	\$30	\$176.66	\$796	\$60	\$265.33



1/02 to 1/03	\$545	\$30	\$181.66	\$817	\$60	\$272.33
1/03 to 1/04	\$552	\$30	\$184.00	\$829	\$60	\$276.33
1/04 to 1/05	\$564	\$30	\$188	\$846	\$60	\$282.00
1/05 to 1/06	\$579	\$30	\$193	\$869	\$60	\$289.66
1/06 to 1/07	\$603	\$30	\$201	\$904	\$60	\$301.33
1/07 to 1/08	\$623	\$30	\$207.66	\$934	\$60	\$311.33
1/08 to 1/09	\$637	\$30	\$212.33	\$956	\$60	\$318.66
1/09 to 1/10	\$674	\$30	\$224.66	\$1,011	\$60	\$337
1/10 to 1/11	\$674	\$30	\$224.66	\$1,011	\$60	\$337

Ineligible child deeming allocation: \$319.00

Part B premium is \$96.40 per month.

VTR (value of one third reduction) is used when an individual or couple lives in the household of another and receives food and shelter from the household or when the individual or couple is living in their own household but receiving support and maintenance from others.

The SSI resource standard is \$2000 for an individual and \$3000 for a couple.

[1-1-95, 4-1-95, 3-30-96, 4-1-97, 4-30-98, 1-1-99; 8.200.520.13 NMAC - Rn, 8 NMAC 4.MAD.520.7 & A, 1-1-01; A, 1-01-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10]

#### 8.200.520.20 COVERED QUARTER INCOME STANDARD:

DATE	CALENDAR QUARTER AMOUNT
Jan. 2010 – Dec. 2010	\$1,090 per calendar quarter
Jan. 2009 – Dec. 2009	\$1,090 per calendar quarter
Jan. 2008 – Dec. 2008	\$1,050 per calendar quarter
Jan. 2007 – Dec. 2007	\$1,000 per calendar quarter
Jan. 2006 – Dec. 2006	\$970 per calendar quarter
Jan. 2005 – Dec. 2005	\$920 per calendar quarter
Jan. 2004 – Dec. 2004	\$900 per calendar quarter
Jan. 2003 – Dec. 2003	\$890 per calendar quarter
Jan. 2002 – Dec. 2002	\$870 per calendar quarter

[8.200.520.20 NMAC - Rn, 8.200.510.14 NMAC & A, 1-1-02; A, 4-1-02; A, 1-1-03; A, 1-1-04; A, 1-1-05; A, 1-1-06; A, 1-1-07; A, 1-1-08, A, 1-1-09; A, 1-15-10]

## NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an emergency amendment to 8.310.8 NMAC, sections 8, 10 -12, 14 and 16, effective January 1, 2010.

### 8.310.8.8 MISSION

**STATEMENT:** [The mission of the New Mexico medical assistance division (MAD) of HSD is to maximize the health status of eligible recipients by furnishing payment for quality health services at levels comparable to private health plans.] To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities. [2/1/95; 8.310.8.8 NMAC - Rn, 8 NMAC 4.MAD.002, 11/1/04; A, 7/16/08; A/E, 1/1/10]

### 8.310.8.10 ELIGIBLE PROVIDERS:

A. [Upon approval of a New Mexico medical assistance division provider participation agreement by MAD

or its designee, licensed practitioners or facilities that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instructions, utilization review instructions, and other pertinent materials. When enrolled, providers receive instruction on how to access these documents. It is the provider's responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided and to comply with the requirements. The provider must contact HSD or its authorized agents to request hard copies of any program rules manuals, billing and utilization review instructions, and other pertinent material and to obtain answers to questions on or not covered by these materials. To be eligible for reimbursement, a provider is bound by the provisions of the MAD provider participation agreement

and all applicable statutes, regulations and executive orders.] Health care to New Mexico MAD eligible recipients is furnished by a variety of providers and provider groups. The reimbursement and billing for these services is administered by MAD. Upon approval of a New Mexico MAD provider participation agreement by MAD or its designee, licensed practitioners, facilities and other providers of services that meet applicable requirements are eligible to be reimbursed for furnishing covered services to eligible recipients. A provider must be enrolled before submitting a claim for payment to the MAD claims processing contractors. MAD makes available on the HSD/MAD website, on other program-specific websites, or in hard copy format, information necessary to participate in health care programs administered by HSD or its authorized agents, including program rules, billing instruction, utilization review instructions, and other pertinent materials. When enrolled, a provider receives instruction on how to access these documents. It is the provider's responsibility to access these instructions, to understand the information provided and to comply with the requirements. The provider must



contact HSD or its authorized agents obtain answers to questions related to the material or not covered by the material. To be eligible for reimbursement, a provider must adhere to the provisions of the MAD provider participation agreement and all applicable statutes, regulations, and executive orders. MAD or its selected claims processing contractor issues payments to a provider using electronic funds transfer (EFT) only. Providers must supply necessary information in order for payment to be made.

B. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

C. The following independent providers are eligible to be reimbursed for providing behavioral health professional services:

(1) individuals licensed as physicians by the board of medical examiners or board of osteopathy and who are board-eligible or board-certified in psychiatry, or the groups they form;

(2) psychologists (Ph.D., Psy.D. or Ed.D.) licensed as clinical psychologists by the New Mexico board of psychologist examiners, or the groups they form;

(3) licensed independent social workers (LISW) licensed by the New Mexico board of social work examiners, or the groups they form;

(4) licensed professional clinical mental health counselors (LPCC) licensed by the New Mexico counseling and therapy practice board, or the groups they form;

(5) licensed marriage and family therapists (LMFT) who are licensed by the New Mexico counseling and therapy practice board, or the groups they form;

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

D. The following agencies are eligible to be reimbursed for providing behavioral health professional services:

(1) community mental health centers (CMHC);

(2) federally qualified health centers (FQHCs);

(3) Indian health service (IHS) hospitals and clinics;

(4) PL 93-638 tribally operated hospitals and clinics;

(5) children, youth and families department (CYFD); and

(6) [hospital] hospitals and their outpatient facilities; and

(7) core service agencies (CSA).

E. When providing services supervised and billed by agencies listed above in Subsection D of 8.310.8 NMAC, the following practitioners' outpatient services may be reimbursed when the services are within their legal scope of practice and meet the definitions of covered services in 8.310.8.13 NMAC:

(1) licensed masters level social workers (LMSW);

(2) licensed professional mental health counselors (LPC);

(3) licensed mental health counselors (LMHC);

(4) licensed psychologist associates;

(5) licensed professional art therapists (LPAT);

(6) registered mental health counselors RMHC; and

(7) licensed alcohol and drug abuse counselors (LADAC).

F. Services must be provided within the scope of the practice and licensure for each provider and must be in compliance with the statutes, rules and regulations of the applicable practice [act] and with the MAD program policy manual.

[2/1/95; 3/1/99; 8.310.8.10 NMAC - Rn, 8 NMAC 4.MAD.717.1 & A, 11/1/04; A, 11/1/05; A, 7/16/08; A/E, 1/1/10]

#### **8.310.8.11 PROVIDER RESPONSIBILITIES:**

A. A provider who furnishes services to medicaid or other health care program eligible recipients must comply with all federal and state laws, regulations and executive orders relevant to the provision of services as specified in the MAD provider participation agreement. A provider must also conform to MAD program rules and instructions as specified in the provider rules manual and its appendices, and program directions and billing instructions, as updated. A provider is also responsible for following coding manual guidelines and CMS correct coding initiatives, including not improperly unbundling or upcoding services. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for billing and for authorization of services.

B. A provider must verify that individuals are eligible for a specific health care program administered by the HSD and its authorized agents, and must verify the eligible recipient's enrollment status at the time services are furnished. A provider must determine if an eligible recipient has other health insurance. A provider must maintain records that are sufficient to fully disclose the extent and nature of the services provided to an eligible recipient. See 8.302.1 NMAC, *General Provider Policies*.

C. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must also enroll as a provider with the coordinated services contractor and follow that contractor's instructions for billing and for authorization of services.

[2/1/95; 3/1/99; 8.310.8.11 NMAC - Rn, 8 NMAC 4.MAD.717.2, 11/1/04; A, 11/1/05; A, 7/16/08; A/E, 1/1/10]

#### **8.310.8.12 COVERAGE CRITERIA:**

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

B. **Medical necessity:** All services must be provided in compliance with the current MAD definition of medical necessity.

[2/1/95; 3/1/99; 8.310.8.12 NMAC - Rn, 8 NMAC 4.MAD.717.3, 11/1/04; A, 11/1/05; A, 7/16/08; A/E, 1/1/10]

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

A. hypnotherapy;

B. biofeedback;

C. services which do not meet the standard of medical necessity as defined in MAD rules;

D. conditions defined only by V-codes in the current version of the international classification of diseases that are not treatable conditions and do not meet the MAD definition of medical necessity are not covered;

E. treatment for personality disorders for adults age 21 and older;

F. treatment provided for adults 21 and older in alcohol or drug residential centers;

G. milieu therapy;

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

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

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

K. electroconvulsive

therapy;

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

M. treatment of mental retardation alone.

[2/1/95; 3/1/99; 8.310.8.14 NMAC - Rn, 8 NMAC 4.MAD.717.5, 11/1/04; A, 11/1/05; A, 7/16/08; A/E, 1/1/10]

#### **8.310.8.16 REIMBURSEMENT:**

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

(1) the provider's billed charge; or

(2) the MAD fee schedule for the specific service or procedure.

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

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

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

E. Behavioral health providers ~~[requiring supervision (see)]~~ listed in Subsection E of 8.310.8.10 NMAC~~{}]~~ cannot bill MAD directly. Services furnished by these licensed providers are billed by the eligible agencies identified in Subsection D of 8.310.8.10 NMAC, above, whether they are employed or whether they furnish services under contract.

F. Behavioral health professional services must be provided directly to the eligible recipient by the licensed behavioral health professionals listed in ~~Subsection A of~~ 8.310.8.10 NMAC, above. Services performed by supervised master's level providers, nurses, bachelor's level and other health professionals not

listed in Subsection E of 8.310.8.10 NMAC cannot be billed by the licensed supervisors even though the services may have been furnished under their direction.

G. Separate professional component billing is allowed for behavioral health services performed within a hospital setting by psychiatrists and licensed psychologists (Ph.D., Psy.D., or Ed. D.).

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

[2/1/95; 3/1/99; 8.310.8.16 NMAC - Rn, 8 NMAC 4.MAD.717.7, 11/1/04; A, 11/1/05; A, 7/16/08; A/E, 1/1/10]

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### **End of Adopted Rules Section**

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## Other Material Related to Administrative Law

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### **NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS**

#### **New Mexico Board of Examiners for Architects**

PO Box 509  
Santa Fe, NM  
505-982-2869

#### **Regular Meeting**

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, February 5, 2010. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

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**End of Other Related Material  
Section**

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## Submittal Deadlines and Publication Dates 2010

<b>Volume XXI</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 4	January 15
Issue Number 2	January 19	January 29
Issue Number 3	February 1	February 12
Issue Number 4	February 15	February 26
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 3	May 14
Issue Number 10	May 17	May 28
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 30
Issue Number 15	August 2	August 16
Issue Number 16	August 17	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 18	October 29
Issue Number 21	November 1	November 15
Issue Number 22	November 16	December 1
Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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.