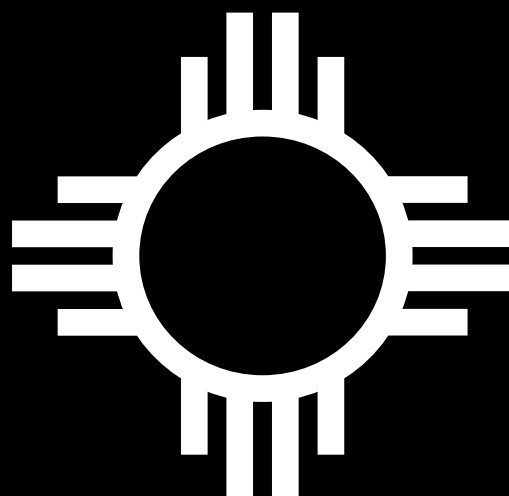


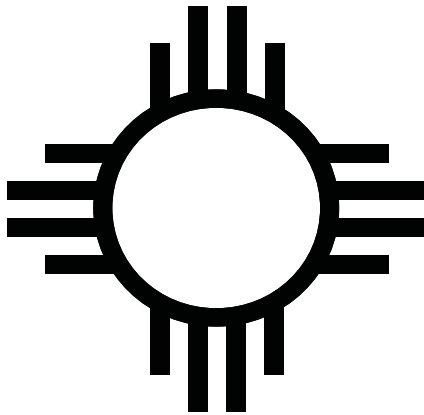
NEW MEXICO REGISTER



Volume XXI
Issue Number 9
May 14, 2010

New Mexico Register

Volume XXI, Issue Number 9
May 14, 2010



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2010

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New Mexico Register

Volume XXI, Number 9

May 14, 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A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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

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

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS

NOTICE OF RULEMAKING

The New Mexico Administrative Office of the District Attorneys (AODA) will hold a public hearing on proposed rules 10.4.1 NMAC through 10.4.14 NMAC pertaining to district attorney personnel administration. The Hearing will be held at 9:00 a.m. on Tuesday, June 15, 2010, at 625 Silver Avenue SW, Suite 310, Albuquerque, New Mexico.

The public hearing will be conducted to receive the presentation of views from interested persons with respect to the personnel rules that apply to covered employees of the AODA. The proposed rules shall be promulgated pursuant to state statutory law, NMSA 1978, Section 36-1A-8.

Copies of the proposed rule can be obtained from:

Printed Copy

Kelly Kuenstler, M.P.A., AODA Director
Administrative Office of the District Attorneys
625 Silver Avenue SW, Suite 310
Albuquerque, New Mexico 87102-3184
Telephone: (505) 827-3789
Email: info@da.nm.us

Electronic Copy

An electronic version of the proposed rule can also be obtained from the website for the AODA at: "http://www.da.state.nm.us/index.html".

Please submit written comments regarding the proposed action to the attention of AODA Director Kelly Kuenstler, M.P.A. at the above mailing address of the Administrative Office of the District Attorneys.

If you are an individual with a disability who is in need of special assistance or reasonable accommodations to attend or participate in the hearing, please contact Director Kelly Kuenstler at the Administrative Office of the District Attorneys at (505) 827-3789. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

New Mexico Department of Agriculture (NMDA) will hold a public hearing to address the proposal of a new rule that brings NMDA into compliance with the Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13. It is proposed that Part 3 be added to NMDA's General Provisions under Title 21, Chapter 1.

The statutory authority for this proposed rule includes: Parental Responsibility Act, NMSA 1978, Sections 40-5A-1 to 40-5A-13; Egg Grading Act, NMSA 1978, Section 25-6-12; Dairy Establishment Sanitation Act, NMSA 1978, Sections 25-7B-4 and 25-7B-6; Standards of Weights and Measures, NMSA 1978, Sections 57-17-1 to 57-17-19; Weightmaster Act, NMSA 1978, Section 57-18-5; Petroleum Products Standards Act; NMSA 1978, Sections 57-18-3 and 57-19-28; New Mexico Pesticide Control Act, NMSA 1978, Section 76-4-17; Plant Protection Act, NMSA 1978, Sections 76-5-14, 76-5-16, 76-5-21, and 76-5-23; Bee Act, NMSA 1978, Sections 76-9-6, 76-9-10 and 76-9-11; and Produce Marketing Act, NMSA 1978, Section 76-15-14.

The draft of the proposed rule can be viewed on NMDA's website at: <http://www.nmda.nmsu.edu/quick-reference/Notice%20of%20Hearing.html>. Copies of the proposed rule can be obtained by contacting NMDA at the number listed below.

The hearing will be held in Las Cruces in the NMDA conference room, located at 3190 South Espina (corner of Gregg and Espina), Las Cruces, New Mexico, beginning at 9:00 a.m. on June 7, 2010.

Written statements in support or opposition, signed by the submitting person, will be accepted and added to the record if received prior to 5:00 p.m., June 7, 2010. Written statements, inquiries, or requests for copies of the rule should be directed to: Ricardo Gonzales, New Mexico Department of Agriculture, P.O. Box 30005, MSC 3189, Las Cruces, New Mexico 88003-8005 or at (575) 646-7079.

NEW MEXICO COAL SURFACE MINING COMMISSION

NOTICE OF PUBLIC MEETING AND HEARING

COAL SURFACE MINING COMMISSION SANTA FE, NEW MEXICO

The Coal Surface Mining Commission will hold a meeting beginning at 1:00 P.M. on **Thursday, June 24, 2010**, in the Office of the Secretary's Conference Room, 3rd floor of the Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico. During the meeting, the Commission will conduct a public hearing to consider the adoption of amendments to 19.8 Parts 1, 7, 11, 20, 30, 31, 34 and 35 NMAC to address changes required by the Office of Surface Mining, U.S. Department of the Interior in order to ensure the State regulations are no less effective than the Federal regulations at 30 CFR, and correct citation style, punctuation, spelling or capitalization corrections in order to conform with 1.24.10.12 NMAC. The Commission may take action on the proposed amendments at the close of the hearing.

Copies of the text of the proposed amendments and the draft agenda will be available from Commission Clerk James O'Hara at (505)-476-3413 or from the Mining and Minerals Division web site at <http://www.emnrd.state.nm.us/>. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Mr. O'Hara at (505)-476-3413 as soon as possible.

Bill Brancard, Director
Mining and Minerals Division

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On Thursday, June 3, 2010, beginning at 9:00 a.m., at the University of New Mexico-Gallup Campus, Calvin Hall/Auditorium Rm. 248, 200 College Rd., Gallup, NM 87301, the State Game Commission will meet in Public Session to hear and consider action as appropriate on the following: Updates and Miscellaneous; Revocations; 3rd Quarter

FY10 Depredation Report; Update on Group B Rules: Elk (19.31.14, NMAC), Barbary Sheep, Oryx and Persian Ibex (19.31.12, NMAC), Bighorn Sheep (19.31.17, NMAC), Migratory Game Bird (19.31.6, NMAC), and Open Gate (19.34.7, NMAC); General Public Comments (comments limited to 3 minutes); Preliminary Budget Discussion; Feral Hog Management and Management Authority; HJM 56, a Joint Memorial Requesting the Department of Game and Fish to Study the Consolidation of Various Hunting and Fishing Licenses and Stamps for the Ease of Hunters and Fishermen; Update on Big Game Enhancement Projects; and Closed Executive Session pursuant to Section 10-15-1, NMSA, 1978.

The following rules are available for public comment and consideration for adoption by the Commission:

* Adoption of Amendments to Turkey (19.31.16, NMAC), Upland Game (19.31.5, NMAC), and [New Rule] - Javelina (19.31.21, NMAC) Rules; and

* Adoption of an Amended Aquatic Invasive Species Rule (19.30.14, NMAC).

A copy of the agenda or any of the affected rules can be obtained from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504 or on the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8029. Please contact Ms. Quintana at least 3 working days before the set meeting date. Public documents, including the Agenda and Minutes can be provided in various accessible forms. Please also contact Ms. Quintana if a summary or other type of accessible form is needed.

NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Carlsbad, New Mexico on Friday, July 9, 2010. The hearing will be held during the Board's regular business meeting beginning at 8:30 a.m. located in Carlsbad, with the specific site location to be determined.

The purpose of the Rule Hearing is to consider amending SPB Rules and Regulations related to: Subsection K of 1.7.4.12 NMAC Administration of the Salary Schedules, 1.7.5 NMAC Recruitment, Assessment, Selection, and Subsection C of 1.7.11.13 NMAC Notice of Final Action.

A final agenda for the board meeting will be available at the Board office on June 25, 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. June 14, 2010, to the Board Office, 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/ beginning May 14, 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 BOARD OF PHARMACY

NEW MEXICO BOARD OF PHARMACY

REGULAR BOARD MEETING

NOTICE TO THE PUBLIC

The New Mexico Board of Pharmacy will convene on **June 14th - 15th, 2010** at 9:00 a.m. in the **Board of Pharmacy Conference Room located at 5200 Oakland Ave.,**

NE, Albuquerque, NM for the purpose of conducting a regular Board meeting.

Interested persons wishing to comment and or present proposed language regarding rule hearings must submit documentation via fax, mail or email to William Harvey, William.Harvey@state.nm.us or Debra Wilhite, debra.wilhite@state.nm.us no later than 72 hours prior to board meeting, if in attendance please provide 15 copies for distribution to board members.

Interested persons may contact Debra Wilhite, Administrative Secretary, 5200 Oakland Ave., NE, Suite A, Albuquerque, NM 87113, (505) 222-9830 or fax (505) 222-9845, e-mail debra.wilhite@state.nm.us to receive copies of the agenda and any proposed rule, which will be available June 4, 2010. The Board may go into executive session at any time to discuss licensee and/or personnel matters. Anyone who needs special accommodations for the meeting should contact the Board office at (505) 222-9830 as soon as possible.

The agenda (tentative) will be available starting June 4, 2010 through the board's website: www.rld.state.nm.us/pharmacy.

The Board will address:

Rule Hearings:

**16.19.1. NMAC
General Provisions**

Hearings, Board Orders and Surrenders:

Approval of Applications:

Other Board Matters:

Committee Reports:

Public Requests:

*Executive Director's Report:
Case presentations*

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The Public Education Department School Transportation Bureau hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on June 17, 2010, from 1:00 p.m. to 2:00 p.m. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.40.2 NMAC	New Mexico School Bus Standards and School Bus Phase-Out	Amend

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Mr. Carlos M. Santiago, School Transportation Bureau Chief, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (Carlosm.santiago@state.nm.us) (505)-827-6643 fax (505) 827-5802.

Written comments must be received no later than 5:00 p.m. on June 9, 2010. However, submission of written comments as soon as possible is encouraged.

The proposed rulemaking actions may be accessed on the Department's website (<http://ped.state.nm.us>) or obtained from Carlos M. Santiago, School Transportation Bureau Chief, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (Carlosm.santiago@state.nm.us) (505)-827-6643, fax (505) 827-5802. The proposed rules will be made available at least thirty days prior to the hearings.

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 Mrs. Patty Gallegos (patty.gallegos@state.nm.us) at (505) 827-6639 as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO RACING
COMMISSIONNEW MEXICO RACING
COMMISSION
NOTICE OF RULEMAKING AND
PUBLIC HEARING
AMENDED

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on May 19, 2010. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Board Room, 4900 Alameda Blvd. NE, Albuquerque, New Mexico. **Please note that the location of this meeting and rule hearing has changed to Albuquerque.**

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.5 NMAC, 15.2.6 NMAC and 16.47.1 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules

may be obtained from India Hatch, Deputy Agency Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Suite A, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

India Hatch
Deputy Agency Director

Dated: April 20, 2010

NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
SECURITIES DIVISION

NOTICE OF RULEMAKING

The Acting Director of the Securities Division proposes to amend the following existing Division rules: 12.11.1 NMAC, General Provisions, Section 11, and 12.11.14 NMAC, Notice Filings for Offerings of Covered Securities, Section 9.

Interested parties may access the proposed

amendments on the Division's website at <http://www.rld.state.nm.us/Securities/index.html>. Copies may also be obtained by contacting the Division at (505) 476-4580. Written comments regarding the proposed amendments to rules should be directed to Marianne Woodard, Attorney, Securities Division, New Mexico Regulation and Licensing Department, 2550 Cerrillos Rd., Toney Anaya Bldg 3rd floor, Santa Fe, New Mexico 87505, or faxed to (505) 984-0617. Comments must be received by the Securities Division by 5:00 p.m. on Monday, June 14, 2010.

End of Notices and Proposed
Rules Section

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Adopted Rules

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT ADULT PROTECTIVE SERVICES DIVISION

8.11.3 NMAC, Adult Protective Services Investigations (filed 4/14/03) repealed 6/1/2010 and replaced by 8.11.3 NMAC, Adult Protective Services Investigations, effective 6/1/2010.

NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT ADULT PROTECTIVE SERVICES DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 11 A D U L T PROTECTIVE SERVICES PART 3 A D U L T PROTECTIVE SERVICES INVESTIGATIONS

8.11.3.1 ISSUING AGENCY:
Aging and Long-Term Services Department
- Adult Protective Services Division.
[8.11.3.1 NMAC - Rp, 8.11.3.1 NMAC,
6/1/2010]

8.11.3.2 SCOPE: Adult
protective services employees and the
general public.
[8.11.3.2 NMAC - Rp, 8.11.3.2 NMAC,
6/1/2010]

**8.11.3.3 S T A T U T O R Y
AUTHORITY:** Adult Protective Services
Act, Section 27-7-1 et seq. NMSA 1978, as
amended; Public Health Act, Section 24-1-
5L, as amended; Employee Abuse Registry
Act, Section 27-7A-1 et seq. NMSA 2005;
Uniform Health-Care Decisions Act, Section
27-7A-1 et seq. NMSA 1995, as amended;
Residential Abuse and Neglect Act, Section
30-47-1 et seq. NMSA 1990, as amended;
Aging and Long-Term Services Department
Act, Section 9-23-1 et seq.
[8.11.3.3 NMAC - Rp, 8.11.3.3 NMAC,
6/1/2010]

8.11.3.4 D U R A T I O N :
Permanent.
[8.11.3.4 NMAC - Rp, 8.11.3.4 NMAC,
6/1/2010]

8.11.3.5 EFFECTIVE DATE:
June 1, 2010, unless a later date is cited at
the end of a section.
[8.11.3.5 NMAC - Rp, 8.11.3.5 NMAC,
6/1/2010]

8.11.3.6 OBJECTIVE: To
establish guidelines for the provision of
adult protective services investigations.
[8.11.3.6 NMAC - Rp, 8.11.3.6 NMAC,
6/1/2010]

8.11.3.7 DEFINITIONS:
A. “Ability to consent”
means an adult’s ability to understand and
appreciate the nature and consequences of
proposed protective services or protective
placement, including benefits, risks and
alternatives to the proposed services or
placement and to make or communicate an
informed decision.

B. “Abuse” means:
(1) knowingly, intentionally or
negligently and without justifiable cause,
inflicting physical pain, injury or mental
anguish;

(2) the intentional deprivation by a
caregiver or person of the services necessary
to maintain the mental and physical health of
an adult;

(3) sexual abuse including
criminal sexual contact, incest and criminal
sexual penetration.

**C. “Administrative
review”** means a review of the department’s
records of a substantiated case for abuse,
neglect or exploitation by the division director
or the director’s designee to determine if the
notification process was performed and if the
standard of preponderance of evidence was
met in substantiating the allegation(s). An
administrative review is not an administrative
hearing before a hearing officer.

**D. “Adult protective
services (APS) attorney”** is the attorney
that represents the department in actions
pursuant to the Adult Protective Services Act
and federal and state constitutional, statutory
and case law.

E. “Aggrieved person”
means a person against whom a substantiation
of abuse, neglect or exploitation has been
substantiated. This does not include self
neglect.

**F. “Appropriate
referral”** is a report of adult abuse, neglect
or exploitation received by the department
which falls within the department’s mandate
to investigate.

G. “Assessment” means
a process of completing structured and
non-structured interviews to acquire an
understanding of an adult’s situation to
determine if immediate protection or
placement may be required.

H. “Care facility”
means a hospital; skilled nursing facility;
intermediate care facility; care facility for
the mentally retarded; psychiatric facility;
rehabilitation facility; kidney disease

treatment center; home health agency;
ambulatory surgical or outpatient facility;
home for the aged or disabled; group home;
adult foster care home; private residence
that provides personal care; sheltered care
or nursing care for one or more persons;
adult day care center; boarding home; adult
residential shelter care home; and any other
health or resident care related facility or
home but does not include a care facility
located at or performing services for any
correctional facility.

I. “Caretaker” means
a facility, provider or individual that has
assumed the responsibility for the care of an
adult.

J. “Case disposition”
means, upon completion of an investigation,
whether to provide protective services for
the purpose of alleviating or preventing
further adult abuse, neglect or exploitation
and ongoing risk to the incapacitated adult.

K. “Decisional capacity”
means an adult’s ability to understand and
appreciate the nature and consequences of
proposed protective services or protective
placement, including benefits, risks and
alternatives to the proposed services or
placement and to make or communicate an
informed decision.

L. “Department” is the
aging and long-term services department.

M. “Emergency” means
an adult is living in conditions that present
a substantial risk of death or immediate and
serious physical harm to the adult or others.

N. “Exploitation” means
an unjust or improper use of an adult’s
resources for another’s profit or advantage,
pecuniary or otherwise.

O. “Incapacitated adult”
means any adult with a mental, physical or
developmental condition that substantially
impairs the adult’s ability to provide
adequately for the adult’s own care or
protection.

P. “Investigation” means
a systematic fact finding process, initiated
within a prescribe timeframe, with the goal
of gathering all information relevant to the
making of a determination as to whether the
alleged maltreatment occurred and assess
whether the incapacitated adult remains at
risk, has decisional capacity and if protective
services are necessary to remediate risk.

**Q. “Investigation
determination”** means whether adult abuse,
neglect or exploitation is substantiated or
unsubstantiated.

R. “Neglect” means the
failure of the caretaker of an adult to provide
for the basic needs of the adult such as
clothing, food, shelter, supervision and care
for the physical and mental health for that

adult. Neglect includes self neglect.

S. “Orientation” means the degree to which a person is cognizant of the:

(1) “time” of day, date, month and year;

(2) “place” meaning that the adult knows where he is;

(3) “person” meaning that the adult knows who he is and who other people are;

(4) “purpose” means that the adult knows the reason for the visit from the APS worker.

T. “Preponderance of evidence” means the general standard of proof in civil cases. To support the finding, 51 percent or more of the relevant collected evidence must support that finding, determining it to be more likely than not.

U. “Protected adult” means an adult for whom a guardian or conservator has been appointed or other protective order has been made or an abused, neglected or exploited adult who has consented to protective services or protective placement.

V. “Reporting person” means a person who makes a referral to adult protective services staff about a situation of alleged abuse, neglect or exploitation of an elderly person or an adult with a disability.

W. “Self neglect” means an act or omission by an incapacitated adult that results in the deprivation of essential services or supports necessary to maintain the incapacitated adult’s minimal mental, emotional or physical health and safety.

X. “Severity standard” means the determination of the severity of the substantiated complaint of abuse, neglect or exploitation for non-licensed health professionals based on the application of the severity standards in section 8.11.6 NMAC, Adult Protective Services Employee Abuse Registry.

Y. “Staffing” means conferences to internally review investigation progress and timelines, service needs and plans for the completion of the investigation.

Z. “Substantiation” means a determination, based upon a preponderance of collected and assessed credible information, that the abuse, neglect or exploitation of an incapacitated adult has occurred.

AA. “Substantiated registry referral” means a substantiated complaint that satisfies the severity standard for referral of the employee to the registry.

BB. “Unlicensed facility” means a facility, such as an assisted living home, which operates without a license from the department of health.

CC. “Unsubstantiated” means that the information collected during

the investigation does not support a finding that the vulnerable adult was abused, neglected or exploited.

[8.11.3.7 NMAC - Rp, 8.11.3.7 NMAC, 6/1/2010]

8.11.3.8 PURPOSE OF ADULT PROTECTIVE SERVICES INVESTIGATION: The adult protective services investigation collects and assesses information related to the following:

A. whether the incident(s) of adult abuse, neglect or exploitation more likely than not occurred;

B. whether the adult remains at risk for continuing abuse, neglect or exploitation;

C. the need for additional protective services; and

D. the need for coordination of appropriate and available short-term services for incapacitated adults who have suffered abuse, neglect or exploitation.

[8.11.3.8 NMAC - Rp, 8.11.3.8 NMAC, 6/1/2010]

8.11.3.9 ELIGIBILITY: The department shall investigate allegations of abuse, neglect or exploitation of incapacitated adults by an individual, program or care facility without regard to family income. Services provided by adult protective services are intended for incapacitated adults. Only citizens and legal residents are eligible for services beyond an investigation or emergency services. Homelessness, in and of itself, does not constitute abuse, neglect or exploitation.

[8.11.3.9 NMAC - Rp, 8.11.3.9 NMAC, 6/1/2010]

8.11.3.10 RIGHT TO REFUSE

AN INVESTIGATION: An investigation may be terminated at the request of the referred adult after a determination is made by the adult protective services investigator, in consultation with the adult protective services supervisor, that the alleged victim appears to have the “ability to consent” and therefore, is able to refuse an investigation.

[8.11.3.10 NMAC - Rp, 8.11.3.10 NMAC, 6/1/2010]

8.11.3.11 PROVISION OF SERVICES DURING THE

INVESTIGATION: If, during the course of an investigation, the department determines that an adult who is incapacitated is in need of services, the department may provide short-term services using the least restrictive intervention necessary, with the consent of the person or surrogate decision maker or pursuant to a court order.

[8.11.3.11 NMAC - Rp, 8.11.3.11 NMAC, 6/1/2010]

8.11.3.12 INTAKE AND

ASSIGNMENT: The department is responsible for providing the public the means for making referrals at all times. Every appropriate referral is assigned to an adult protective services investigator for investigation in a reasonable timeframe determined by the department. Upon receipt of a referral alleging abuse, neglect or exploitation of an adult in a care facility, the department notifies any of the state agencies which hold an interest in the licensing, certification or monitoring of the care facility.

[8.11.3.12 NMAC - Rp, 8.11.3.12 NMAC, 6/1/2010]

8.11.3.13 INITIATING, INVESTIGATING, ASSESSING, DOCUMENTING, SERVICE PLANNING, STAFFING AND MAKING

A DETERMINATION: In accordance with department procedures, every case accepted by adult protective services shall be initiated, investigated, assessed, documented and staffed pursuant to this part. A determination of “substantiated” or “unsubstantiated” shall be made and, when appropriate, services will be offered to the incapacitated adult.

A. The department proceeds as follows:

(1) the department visits the residence of the referred adult(s) when investigating alleged abuse, neglect or exploitation;

(2) the department cannot enter a home without the permission of the resident;

(3) if the department is denied access to the home of an alleged victim, law enforcement or the adult protective services attorney may be contacted to assist in gaining access pursuant to APS Act 27-7-19.D NMSA 1978.

B. Anyone willfully interfering with an investigation of adult abuse, neglect or exploitation is guilty of a misdemeanor and subject to a civil penalty of not more than \$10,000 per violation pursuant to APS Act 27-7-19.F.NMSA 1978.

C. The department conducts interviews with those individual(s) who potentially have knowledge of the alleged abuse, neglect or exploitation.

D. The department provides the following information to individuals being interviewed:

(1) the purpose of the department’s contact;

(2) if the person being interviewed is alleged to be the victim or perpetrator;

(3) the department’s intent to maintain confidentiality except when it becomes necessary to inform or collaborate with the district attorney, courts, law enforcement officials or other appropriate agencies in accordance with the Adult Protective Services or Resident Abuse and Neglect Acts and other statutes; and

(4) their right to refuse to participate in the investigation.

E. The department establishes reasonable timeframes to complete investigations and collects evidence, records observations and other information that may be used in substantiating or un-substantiating the allegations in the report.

F. The department has the authority to intervene, when necessary, including emergency removal, initiating court petitions and providing short-term services when funds are available.

G. The department creates documentation on each case, staffs each case with an adult protective services supervisor and, when appropriate, creates a service plan.

H. The department uses a preponderance of evidence to make a determination in every case and substantiates or un-substantiates every allegation.

I. The department will notify the alleged perpetrator(s) of the determination of the case by mail. In the event the allegation is substantiated, the perpetrator may request an administrative review of the case within 10 days of the receipt of the letter in accordance with this part. Based upon the facts and circumstances of the investigation, the department need not send a letter in all cases of substantiated self neglect.

[8.11.3.13 NMAC - Rp, 8.11.3.13 NMAC, 6/1/2010]

8.11.3.14 CONFIDENTIALITY OF INVESTIGATION RECORDS:

Investigations completed by the department are confidential and are only released as allowed for by NMSA 1978 section 27-7-9. The department cooperates with the domestic violence homicide review team through the New Mexico Crime Reparations Act to the extent allowed by law. During an emergency, the department may release limited information, on a need to know basis, as allowed by law.

[8.11.3.14 NMAC - Rp, 8.11.3.20 NMAC, 6/1/2010]

8.11.3.15 NOTIFICATION OF AND THE RESULTS OF AN INVESTIGATION:

A. The department shall notify the alleged victim and the alleged perpetrator that an investigation has been initiated and that notification shall be documented in the case notes. The department has the option of notifying the reporting person if the case has been accepted or not accepted for investigation.

B. Unless otherwise provided for in this section, the department shall notify the alleged victim and perpetrator.

C. The department shall notify the perpetrator in writing of the department's substantiation of abuse, neglect or exploitation, the legal and factual basis for the substantiation and the aggrieved person's right to appeal the substantiation in accordance with 8.11.1.17.NMAC.

[8.11.3.15 NMAC - Rp, 8.11.3.21 NMAC, 6/1/2010]

8.11.3.16 ADMINISTRATIVE REVIEW:

A. An aggrieved person may request an administrative review of a decision made by the division regarding a substantiation of abuse, neglect or exploitation in accordance with the provisions set forth in this section. Administrative reviews are not available on any action that is currently or was previously the subject of a lawsuit.

B. Requests for administrative reviews must be made in writing to the adult protective services division director within ten calendar days of receipt of the letter of substantiation. The division director or their designee, may reverse the substantiation any time before the scheduled review.

C. Notification of substantiation, request for administrative reviews and administrative review process.

(1) Requests for administrative reviews must be made in writing to the adult protective services division director within ten calendar days of the receipt of the letter of substantiation. The division director or their designee may reverse the substantiation anytime before the scheduled review.

(2) Within 30 days of the receipt of the request for administrative review, the division notifies the aggrieved person requesting the administrative review of the time and date of the review, which may be no later than 60 days from the date of the request.

(3) The person conducting the review shall be neutral and have no direct involvement with the investigation or substantiation.

(4) The person conducting the administrative review issues a written decision within 30 days of the review, giving the reasons why the substantiation, by preponderance of evidence, is substantiated or reversed. The written decision is mailed to the aggrieved party and placed in the case record.

(5) The decision by the person conducting the administrative review is final and non-appealable except as otherwise provided for by the law.

[8.11.3.16 NMAC - N, 6/1/2010]

8.11.3.17 EMPLOYEE ABUSE REGISTRY: The department abides by all the terms of the aging and long-term services

department Employee Abuse Registry, 8.11.6 NMAC and the department of health Employee Abuse Registry 7.1.12 NMAC. [8.11.3.17 NMAC - N, 6/1/2010]

HISTORY OF 8.11.3 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the state records center and archives under:

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 8/22/86.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 6/18/87.

SSD 10.0.0, Social Services - Definition and Goal Statement, filed 9/18/90.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 8/22/86.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 1/29/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 6/18/87.

SSD 10.1.0, Social Services for Adults - General Provisions, filed 9/18/90.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 8/22/86.

SSD 10.2.0, Social Services for Adults - General Guidelines, filed 9/18/90.

History of Repealed Material:

8.11.3 NMAC, Adult Protective Services Investigations (filed 4/14/03) repealed 6/1/2010.

Other History:

SSD 10.2.0, Social Services for Adults - General Guidelines (filed 9/18/90) was renumbered, reformatted, amended and replaced by 8.11.3 NMAC, Adult Protective Services Investigations, effective 4/30/03.

8.11.3 NMAC, Adult Protective Services Investigations (filed 4/14/03) was replaced by 8.11.3 NMAC, Adult Protective Services Investigations, effective 6/1/2010.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

The Higher Education Department repeals its rule 5.55.4 NMAC, entitled Dual Credit, filed July 17, 2008, effective May 14, 2010. Full text of the Dual Credit rule may still be accessed at Public Education Department rule, 6.30.7 NMAC, Dual Credit.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.301.3 NMAC, sections 1, 3, 6 and 8 - 31, which will be effective May 14, 2010.

8.301.3.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).

[1-1-95; 8.301.3.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 3-1-06; A, 5-14-10]

8.301.3.3 S T A T U T O R Y

AUTHORITY: The New Mexico medicaid program [is] and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act [—as amended and by the state human services department pursuant to state statute] as amended or by state statute. See Section 27-2-12 et seq. NMSA 1978 (Repl. Pam. 1991).

[1-1-95; 8.301.3.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 3-1-06; A, 5-14-10]

8.301.3.6 OBJECTIVE: [The objective of these regulations is to provide policies for the service portion of the New Mexico medicaid program.] The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance program.

[1-1-95, 2-1-95; 8.301.3.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 3-1-06; A, 5-14-10]

8.301.3.8 M I S S I O N

STATEMENT: [The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals 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 lives of their communities.

[2-1-95; 8.301.3.8 NMAC - Rn, 8 NMAC 4.MAD.002, 3-1-06; A, 5-14-10]

8.301.3.9 G E N E R A L

NONCOVERED SERVICES: MAD does not cover certain procedures, services, or miscellaneous items. [This section contains a general description of the types of services that medicaid does not cover. Also] See specific provider or service sections for additional information on service coverage and limitations. A provider cannot turn an account over to collections or to any other factor intending to collect from the eligible recipient or their personal representative. See 8.302.2.11 NMAC, billing and claims filing limitations. A provider cannot bill an eligible recipient or their personal representative for the copying of the eligible recipient's records, but must provide copies of the records to other providers upon request.

[2-1-95; 8.301.3.9 NMAC - Rn, 8 NMAC 4.MAD.602 & A, 3-1-06; A, 5-14-10]

8.301.3.10 APPOINTMENT, INTEREST AND CARRYING CHARGES: [Medicaid] MAD does not

cover penalties on payments for broken or missed appointments, costs of waiting time, [and] or interest or carrying charges on accounts. [Providers may not bill medicaid or medicaid recipients] A provider may not bill an eligible recipient or their personal representative for the penalties associated with missed or broken appointments, with the exception of recipient eligibility categories of [SCHHP] CHIP or WDI who may be charged up to \$5 for a missed appointment.

[2-1-95; 3-1-99; 8.301.3.10 NMAC - Rn, 8 NMAC 4.MAD.602.1 & A, 3-1-06; A, 5-14-10]

8.301.3.11 C O N T R A C T SERVICES:

Services furnished by contractors, organizations, or individuals who are not the billing provider must meet specific criteria for coverage [by medicaid] as stated in MAD or its designee's rules. See 8.302.2 NMAC, *Billing for Medicaid Services*.

[2-1-95; 8.301.3.11 NMAC - Rn, 8 NMAC 4.MAD.602.2 & A, 3-1-06; A, 5-14-10]

8.301.3.12 C O S M E T I C SERVICES AND SURGERIES:

[Medicaid] MAD does not cover cosmetic items or services that are prescribed or used for aesthetic purposes. This includes items for aging skin, for hair loss, and personal care items such as non-prescription lotions, shampoos, soaps or sunscreens. [Medicaid] MAD does not cover cosmetic surgeries performed for aesthetic purposes. "Cosmetic surgery" is defined as procedures performed to improve the appearance of physical features [—The procedures] that may or may not improve the functional ability of the area of concern. [Medicaid] MAD covers only surgeries that meet specific criteria and are approved as medically necessary reconstructive surgeries.

[2-1-95; 8.301.3.12 NMAC - Rn, 8 NMAC 4.MAD.602.3 & A, 3-1-06; A, 5-14-10]

8.301.3.13 D E N T A L SERVICES:

[Medicaid] MAD does not cover dental services that are performed for aesthetic or cosmetic purposes. [Medicaid] MAD covers orthodontic services only for [recipients] an eligible recipient less than [twenty-one (21)] 21 years of age and only when specific criteria are met. See 8.310.7 NMAC, *Dental Services*.

[2-1-95; 8.301.3.13 NMAC - Rn, 8 NMAC 4.MAD.602.4 & A, 3-1-06; A, 5-14-10]

8.301.3.14 D I A G N O S T I C IMAGING AND THERAPEUTIC RADIOLOGY SERVICES:

[Medicaid] MAD does not cover separate charges for kits, films, or supplies [—or other material used in the performance of diagnostic imaging or therapeutic radiology services]. All necessary materials and minor services

are included in the service or procedure charge. See 8.324.3 NMAC, *Diagnostic Imaging and Therapeutic Radiology Services* [MAD.752].

[2-1-95; 8.301.3.14 NMAC - Rn, 8 NMAC 4.MAD.602.5, 3-1-06; A, 5-14-10]

8.301.3.15 D U R A B L E MEDICAL EQUIPMENT AND MEDICAL SUPPLIES:

[Medicaid] MAD does not cover durable medical equipment or medical supplies that do not meet [any of the following criteria] the definition of durable medical equipment as described in 8.324.5.12 NMAC, covered durable medical equipment and medical supplies. The following criteria are applied to each request as part of the determination of non-coverage:

A. items that do not primarily serve a therapeutic purpose [and/or] or are generally used for comfort or convenience purposes;

B. environment-control equipment that is not primarily medical in nature [—such as air cleaners];

C. institutional equipment that is not appropriate for home use [—such as air-fluidized bed beds];

D. items that are not generally accepted by the medical profession as being therapeutically effective or are determined by medicare regulations to be ineffective or unnecessary;

E. items that are hygienic in nature [—such as home type bed baths];

F. hospital or physician diagnostic items [—such as cardiovert];

G. instruments or devices manufactured for use by physicians [—such as esophageal dilator];

[H. —items not essential to the administration of moist heat therapy, such as hydrocollator heating units;

I.] H. exercise equipment not primarily medical in nature or for the sole purpose of muscle strengthening or muscle stimulation without a medically necessary purpose;

[J. —items that produce no demonstrable therapeutic effect, such as myoflex muscle stimulators];

[K.] I. support exercise equipment primarily for institutional use [—such as parallel bars];

[L.] J. items that are not reasonable or necessary for monitoring the pulse of homebound eligible recipients with or without cardiac pacemakers [—such as pulse tachometers];

[M.] K. items that are used to improve appearance or for comfort purposes; [—such as sauna baths or wigs; and

—N.] L. items that are precautionary in nature [—such as spare tanks of oxygen in addition to portable backup systems] except those needed to prevent urgent or emergent events; and

[Ø:] M. a provider or medical supplier that routinely supplies an item to an eligible recipient must document that the order for additional supplies was requested by the recipient or their personal representative and the provider or supplier must confirm that the eligible recipient does not have an excess of a 15 calendar day supply of the item before releasing the next supply to the eligible recipient; see 8.324.5 NMAC, *Durable Medical Equipment and Medical Supplies*.

[2-1-95; 8.301.3.15 NMAC - Rn, 8 NMAC 4.MAD.602.6 & A, 3-1-06; A, 5-14-10]

8.301.3.16 EDUCATIONAL OR VOCATIONAL SERVICES: [Medicaid] MAD does not cover literature, booklets, and other educational materials. Dietary counseling is covered only for [recipients] an eligible recipient less than [twenty-one (21)] 21 years of age, as part of the early and periodic screening, diagnosis and treatment (EPSDT) program and for pregnant women. [Medicaid] MAD does not cover formal educational or vocational training services, unless those services are included as active treatment services for [recipients] an eligible recipient in intermediate care facilities for the mentally retarded or for [recipients] an eligible recipient less than [twenty-one (21)] 21 years of age receiving inpatient psychiatric services. See 42 CFR 441.13(b). "Formal educational services" relate to training in traditional academic subjects. Vocational training services relate to organized programs directly related to the preparation of eligible recipients for paid or unpaid employment.

[2-1-95; 8.301.3.16 NMAC - Rn, 8 NMAC 4.MAD.602.7 & A, 3-1-06; A, 5-14-10]

8.301.3.17 EXPERIMENTAL OR INVESTIGATIONAL SERVICES: [Medicaid] MAD does not cover procedures, technologies or therapies that are considered experimental or investigational. See 8.325.6 NMAC, *Experimental or Investigational Procedures, Technologies or Therapies*.

[2-1-95; 8.301.3.17 NMAC - Rn, 8 NMAC 4.MAD.602.8, 3-1-06; A, 5-14-10]

8.301.3.18 FOOT CARE: [Medicaid] MAD does not cover certain routine foot care services. For detailed description of covered and non-covered services, see 8.310.11 NMAC, *Podiatry Services*.

[2-1-95; 8.301.3.18 NMAC - Rn, 8 NMAC 4.MAD.602.9 & A, 3-1-06; A, 5-14-10]

8.301.3.19 HAIR OR NAIL ANALYSIS: [Medicaid] MAD does not cover hair or nail analysis.

[2-1-95; 8.301.3.19 NMAC - Rn, 8 NMAC 4.MAD.602.10, 3-1-06; A, 5-14-10]

8.301.3.20 LABORATORY SERVICES: [Medicaid] MAD does not cover laboratory specimen handling, mailing, or collection fees. Specimen collection is covered only if the specimen is drawn by venipuncture, arterial stick, or collected by urethral catheterization from [recipients who are not residents of nursing facilities or hospital inpatients] an eligible recipient who is not a resident of a nursing facility or hospital. See 8.324.2 NMAC, *Laboratory Services* [MAD.751].

[2-1-95; 8.301.3.20 NMAC - Rn, 8 NMAC 4.MAD.602.11, 3-1-06; A, 5-14-10]

8.301.3.21 PHARMACY SERVICES: [Medicaid] MAD does not cover methadone used in drug treatment programs. [Medicaid] MAD does not cover drug items that are classified as ineffective by the food and drug administration (FDA) and antitubercular drug items that are available from the public health department. In addition, [medicaid] MAD does not cover personal care items or pharmacy items used for cosmetic purposes only. Transportation to pharmacies is not a benefit of the program when other options are available. See also 8.324.4 NMAC, *Pharmacy Services*.

[2-1-95; 8.301.3.21 NMAC - Rn, 8 NMAC 4.MAD.602.12 & A, 3-1-06; A, 5-14-10]

8.301.3.22 POSTMORTEM EXAMINATIONS: [Medicaid] MAD does not cover postmortem examinations.

[2-1-95; 8.301.3.22 NMAC - Rn, 8 NMAC 4.MAD.602.13, 3-1-06; A, 5-14-10]

8.301.3.23 PREGNANCY TERMINATION PROCEDURES: [Medicaid] MAD does not cover elective pregnancy termination procedures. For detailed description of covered and non-covered services, see 8.325.7 NMAC, *Pregnancy Termination Procedures*.

[2-1-95; 8.301.3.23 NMAC - Rn, 8 NMAC 4.MAD.602.14 & A, 3-1-06; A, 5-14-10]

8.301.3.24 PREPARATIONS DISPENSED FOR HOME USE: [Medicaid] MAD does not cover oral, topical, otic, or ophthalmic preparations dispensed to [recipients] an eligible recipient by physicians, clinics, nurse practitioners, physician assistants, or optometrists for home use or self administration unless authorized by MAD to assure the availability of medications.

[2-1-95; 8.301.3.24 NMAC - Rn, 8 NMAC 4.MAD.602.15 & A, 3-1-06; A, 5-14-10]

8.301.3.25 PROVIDER INELIGIBILITY: [Providers] A provider must be eligible for participation [in Medicaid] as a MAD approved provider at the time services are furnished. [Medicaid] MAD does not cover services performed

during a time period when the [providers or facilities] provider or facility did not meet required licensing or certification requirement, or when the providers' participation [was] is not approved by MAD. [2-1-95; 8.301.3.25 NMAC - Rn, 8 NMAC 4.MAD.602.16 & A, 3-1-06; A, 5-14-10]

8.301.3.26 REPRODUCTIVE HEALTH SERVICES: [Medicaid] MAD does not cover certain reproductive health services. See 8.325.3 NMAC, *Reproductive Health Services* [MAD-762]

[2-1-95; 8.301.3.26 NMAC - Rn, 8 NMAC 4.MAD.602.17, 3-1-06; A, 5-14-10]

8.301.3.27 [NON-COVERED SERVICES]: ~~Medicaid does not cover broken appointments, or telephone consultations. Transportation to pharmacies is not a benefit of the program when other options are available.~~ **TELEPHONE SERVICES:** MAD does not cover any telephone consultations between the eligible recipient and their provider. MAD does pay for telehealth services as described in 8.310.13 NMAC, *Telehealth Services*.

[2-1-95; 3-1-99; 8.301.3.27 NMAC - Rn, 8 NMAC 4.MAD.602.18 & A, 3-1-06; A, 5-14-10]

8.301.3.28 ROUTINE PHYSICALEXAMINATIONS: ~~Medicaid covers routine physical examinations for non-institutionalized recipients less than twenty-one (21) years of age. Medicaid covers routine examinations for recipients residing in nursing facilities or intermediate care facilities for the mentally retarded.]~~ MAD only covers routine examinations for an eligible recipient residing in a nursing facility or intermediate care facility for the mentally retarded. Physical examinations, screenings, and treatment are available to [recipients] an eligible recipient less than [twenty-one (21)] 21 years of age through the tot to teen healthcheck screen, New Mexico's EPSDT screening program.

[2-1-95; 8.301.3.28 NMAC - Rn, 8 NMAC 4.MAD.602.19 & A, 3-1-06; A, 5-14-10]

8.301.3.29 SCREENING SERVICES: [Medicaid] MAD does not cover screening services that are not used to make a diagnosis, such as chromosome screening, hypertension screening, diabetic screening, general health panels, executive profiles, paternity testing, or premarital screens. [Medicaid] MAD covers screening services for [children] an eligible recipient less than [twenty-one (21)] 21 years of age through the tot to teen healthcheck program. [Medicaid] MAD covers screening services ordered by [providers] a provider for cancer detection, such as pap smears and mammograms.

[2-1-95; 8.301.3.29 NMAC - Rn, 8 NMAC

4.MAD.602.20 & A, 3-1-06; A, 5-14-10]

8.301.3.30 SERVICES NOT COVERED BY MEDICARE: [Medicaid] MAD does not cover services, procedures, or devices that are not covered by medicare due to their determination that the [service; procedure or device is ineffective or of questionable efficacy] service is not medically necessary or that the service is experimental or not effective.
[2-1-95; 8.301.3.30 NMAC - Rn, 8 NMAC 4.MAD.602.21 & A, 3-1-06; A, 5-14-10]

8.301.3.31 [S E R V I C E REQUIREMENTS NOT SATISFIED: Medicaid does not reimburse for services or procedures for which any required prior authorization, documentation, acknowledgements, or filing limits have not been met by providers. See 8.302.1 NMAC; *General Provider Policies*.] **BARIATRIC SURGERY SERVICES:** MAD does not reimburse for bariatric surgery services or procedures.
[2-1-95; 8.301.3.31 NMAC - Rn, 8 NMAC 4.MAD.602.22 & A, 3-1-06; Repealed, 3-15-10; 8.301.3.31 NMAC - N, 5-14-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.6 NMAC, Sections 1, 3, 5, 6 and 8-15, effective May 14, 2010.

8.310.6.1 ISSUING AGENCY: New Mexico Human Services Department (HSD).
[2/1/95; 8.310.6.1 NMAC - Rn, 8 NMAC 4.MAD.000.1, 12/1/03; A, 5/14/10]

8.310.6.3 S T A T U T O R Y AUTHORITY: The New Mexico medicaid program [is] and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act[, as amended and by the state human services department pursuant to state statute.] as amended or by state statute. See Section 27-2-12 et seq. NMSA 1978 [(Repl. Pamph. 1994)].
[2/1/95; 8.310.6.3 NMAC - Rn, 8 NMAC 4.MAD.000.3, 12/1/03; A, 5/14/10]

8.310.6.5 EFFECTIVE DATE: February 1, 1995, unless a later date is cited at the end of a section.
[2/1/95; 8.310.6.5 NMAC - Rn, 8 NMAC 4.MAD.000.5, 12/1/03; A, 5/14/10]

8.310.6.6 OBJECTIVE: [The objective of these regulations is to provide policies for the service portion of the New

Mexico medicaid program. These policies describe eligible providers; covered services; noncovered services; utilization review; and provider reimbursement.] The objective of this rule is to provide instruction for the service portion of the New Mexico medical assistance programs.
[2/1/95; 8.310.6.6 NMAC - Rn, 8 NMAC 4.MAD.000.6, 12/1/03; A, 5/14/10]

8.310.6.8 M I S S I O N STATEMENT: [The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals 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 lives of their communities.
[2/1/95; 8.310.6.8 NMAC - Rn, 8 NMAC 4.MAD.002, 12/1/03; A, 5/14/10]

8.310.6.9 VISION CARE SERVICES: [The New Mexico medicaid program (medicaid) pays for medically necessary health services furnished to eligible recipients. Medicaid pays for covered vision services. This part describes eligible providers; covered services; service limitations and general reimbursement methodology.] The medical assistance division (MAD) pays for medically necessary health services furnished to eligible recipients. To help New Mexico MAD eligible recipients receive medically necessary services, MAD pays for covered vision services.
[2/1/95; 8.310.6.9 NMAC - Rn, 8 NMAC 4.MAD.715, 12/1/03; A, 5/14/10]

8.310.6.10 E L I G I B L E PROVIDERS:

A. [Upon approval of New Mexico medical assistance program provider participation agreements by the New Mexico medical assistance division (MAD), the following providers are eligible to be reimbursed for providing vision services:] 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 instructions, 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 to 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. Eligible providers include:

(1) individuals licensed to practice medicine in New Mexico, who limit their practice to ophthalmology (ophthalmologists) and the groups, corporations, and professional associations they form;

(2) individuals licensed to practice optometry in New Mexico and the groups, corporations, and professional associations they form;

(3) individuals licensed as opticians; opticians are eligible to participate as providers of eyeglasses, contact lenses, supplies, and other vision-related materials; and

(4) IHS or tribal facilities operating under Public Law 93-638.

B. [Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent materials from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.] Once enrolled, a provider receives a packet of information, including MAD program policies, billing instructions, utilization review instructions, and other pertinent materials from MAD. A provider is responsible for ensuring that he has received and understands these materials and for updating his knowledge as new materials are provided by MAD.

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; 8.310.6.10 NMAC - Rn, 8 NMAC 4.MAD.715.1 & A, 12/1/03; A, 5/14/10]

8.310.6.11 PROVIDER RESPONSIBILITIES:

~~[A.] Providers who furnish services to medicaid recipients must comply with all specified medicaid participation requirements. See 8.302.1 NMAC, General Provider Policies.~~

~~B. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.~~

~~C. Providers must maintain records that are sufficient to fully disclose the extent and nature of the services provided to recipients. See 8.302.1 NMAC, General Provider Policies.]~~

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 also must 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.

[D.] C. [Providers] A provider must ensure that prescriptions for eyeglasses or contact lenses are accurate to the extent that the prescription corrects the eligible recipient's vision to the degree of acuity indicated on the [report of] vision examination [form] record.

[E.] D. An eyeglass and contact lens [suppliers are] supplier is responsible for verifying that the correct prescription is provided.

(1) [If prescriptions are inaccurate and recipients are] If a prescription is inaccurate and an eligible recipient is unable to use their eyeglasses or contact lenses, payment for both the eye examination and the eyeglasses or contact lenses is subject to

recoupment.

(2) If the eyeglasses or contact lenses are not ground to the correct prescription, payment for the eyeglasses or contact lenses is subject to recoupment.

[2/1/95; 8.310.6.11 NMAC - Rn, 8 NMAC 4.MAD.715.2 & A, 12/1/03; A, 5/14/10]

8.310.6.12 COVERED SERVICES: [Medicaid] MAD covers specific vision care services that are medically necessary for the diagnosis of and treatment of eye diseases [and], MAD pays for the correction of refractive errors, as required by the condition of the eligible recipient. All services must be furnished within the limits of [medicaid] MAD benefits, within the scope and practice of the medical professional as defined by state law and in accordance with applicable federal, state and local laws and regulations.

A. Exam: [Medicaid covers routine eye exams. Coverage for adults is limited to one routine eye exam in a twenty-four month period. Exams for an existing medical condition, such as diabetes, will be covered for required follow-up and treatment.] MAD covers routine eye exams. Coverage for an eligible adult recipient over 21 years of age is limited to one routine eye exam in a 36-month period. An exam for an existing medical condition, such as cataracts, diabetes, hypertension, and glaucoma, will be covered for required follow-up and treatment. The medical condition must be clearly documented on the visual examination [form] record and indicated by diagnosis on the claim. Exam coverage for an eligible recipient under 21 years of age is limited to one routine eye exam in a 12-month period.

B. Corrective lenses: [Medicaid covers corrective lenses. Coverage for adults is limited to one set of corrective lenses in a twenty-four-month period, unless an ophthalmologist or optometrist recommends a change in prescription due to a medical condition affecting vision. The vision prescription must be appropriately recorded on the visual examination form.] MAD covers one set of corrective lenses for an eligible adult recipient age 21 years or older not more frequently than once in a 36-month period. For an eligible child recipient under the age of 21 years, one set of corrective lenses is covered no more frequently than once every 12 months. For either age group, MAD covers corrective lenses more frequently when an ophthalmologist or optometrist recommends a change in prescription due to a medical condition, including but not limited to cataracts, diabetes, hypertension, glaucoma or treatment with certain systemic medications affecting vision. The vision prescription must be appropriately recorded on the visual examination record and

indicated by a diagnosis on the claim.

(1) For the purchase of eyeglasses, the diopter correction must meet or exceed one of the following diopter correction criteria:

(a) -1.00 myopia (nearsightedness);
(b) + 1.00 for hyperopia (farsightedness);

(c) [+0.75] 0.75 astigmatism (distorted vision), the combined refractive error of sphere and cylinder to equal 0.75 will be accepted;

(d) ±1.00 for presbyopia (farsightedness of aging); or

(e) [+2.00 for] diplopia (double vision) - prism lenses.

(2) [If an existing prescription is updated, there must be] When an eligible recipient's existing prescription is updated and the frequency of replacement lenses meets the requirements in Subsection B of 8.310.6.12 NMAC, the lenses may be replaced when there is a minimum 0.75 diopter change in the prescription. [Exceptions are] The combined refractive error of sphere and cylinder to equal 0.75 will be accepted. An exception is considered for the following:

(a) [recipients with cataracts; or] an eligible recipient over 21 years of age with cataracts;

(b) an ophthalmologist or optometrist recommends a change due to a medical condition; or

[(b)] (c) [recipients under twenty one years of age:] an eligible recipient under 21 years of age.

C. Bifocal lenses: [Medicaid] MAD covers bifocal lenses with a correction of 0.25 or more for distance vision and 1 diopter or more for added power (bifocal lens correction).

D. Tinted lenses: [Medicaid] MAD covers tinted lenses with filtered or photochromic lenses if the examiner documents one or more of the following disease entities, injuries, syndromes or anomalies in the "comments" section of the visual examination [form] record, and the prescription meets the diopter correction purchase criteria:

(1) aniridia;
(2) albinism, ocular;
(3) traumatic defect in iris;
(4) iris coloboma, congenital;
(5) chronic keratitis;
(6) sjogren's syndrome;
(7) aphakia, U.V. filter only if intraocular lens is not U.V. filtered; [and]
(8) rod monochromaly;
(9) pseudophakia; and
(10) other diagnoses confirmed by ophthalmologist or optometrist that is documented on visual examination form.

E. Polycarbonate lenses: MAD covers polycarbonate lenses for:

(1) an eligible recipient for medical

conditions which require prescriptions for high power lenses;

(2) an eligible recipient with monocular vision;

(3) an eligible recipient who works in a high-activity physical job.

[E-] **E. Balance lenses:** [Medicaid] MAD covers balance lenses for an eligible recipient under 21 years of age without a prior authorization in the following situations:

(1) lenses used to balance an aphakic eyeglass lens; or

(2) [recipient] an eligible recipient under 21 years of age is blind in one eye and the visual acuity in the eye requiring correction meets the diopter correction purchase criteria.

[F-] **F. Frames:** Medicaid covers frames for corrective lenses. Coverage for adults is limited to one frame in a twenty-four-month period.]

G. **Frames:** MAD covers frames for corrective lenses. Coverage for an eligible recipient 21 years of age or older is limited to one frame in a 36-month period and coverage for an eligible recipient under 21 years of age is limited to one frame in a 12-month period unless:

(1) an ophthalmologist or optometrist has documented a medical condition that requires replacement; or

(2) other situations that will be reviewed on a case-by-case basis.

[G-] **H. Contact lenses:** [Medicaid] MAD covers contact lenses, either the original prescription or replacement, only with a prior authorization. Coverage for [adults] an eligible adult recipient over 21 years of age or older is limited to one pair of contact lenses in a [twenty-four] 24-month period, unless an ophthalmologist or an optometrist recommends a change in prescription due to a medical condition affecting vision. [Requests] A request for prior authorization will be evaluated on dioptic criteria [and/or] or visual acuity, the eligible recipient's social or occupational need for contact lenses, and special medical needs. The criteria for authorization of contact lenses are as follows:

(1) the eligible recipient must have a diagnosis of keratoconus or diopter correction of +/- -6.00 or higher in any [meridian-] meridian or at least 3.00 diopters of anisometropia;

(2) monocular aphakics may be provided with one contact lens and a pair of bifocal glasses.

[H-] **I. Replacement:** Eyeglasses or contact lenses that are lost, broken or have deteriorated to the point that, in the examiner's opinion, they have become unusable to the eligible recipient, may be replaced for the following:

(1) [recipients under twenty-one (21) years of age; or] the eligible recipient is

under 21 years of age; or

(2) [recipients—twenty-one (21) years of age or older and who have developmental disabilities] the eligible recipient is 21 years of age or older and has a developmental disability.

(3) Documentation for replacement:

(a) the eyeglasses or contact lens (or lenses) must meet the diopter correction purchase criterion and must be recorded on the [report of] visual examination [form] record; and

(b) the loss, deterioration or breakage must be documented [in the appropriate section of] on the visual examination [form] record.

[I-] **J. Prisms:** [All prisms] Prisms are covered if medically indicated to prevent diplopia (double vision). Documentation is required on the visual examination [form] record.

[J-] **K. Lens tempering:** [Medicaid] MAD covers lens tempering on new glass lenses only.

[K-] **L. Lens edging:** [Medicaid] MAD covers lens edging and lens insertion.

[L-] **M. Minor repairs:** [Medicaid] MAD covers minor repairs to eyeglasses.

[M-] **N. Dispensing fee:** [Medicaid] MAD pays a dispensing fee to [ophthalmologists, optometrists, or opticians] an ophthalmologist, optometrist, or optician for dispensing a combination of lenses and new frames. This fee is not paid when contact lenses are dispensed. The prescription and fitting of contact lenses is paid to dispensing ophthalmologists and optometrists. Independent technicians are not covered by MAD to prescribe and fit contact lenses.

[N-] **O. Eye prosthesis:** [Medicaid] MAD covers eye prostheses (artificial eyes). Refer to 8.324.8 NMAC, *Prosthetics and Orthotics*.

[2/1/95; 8.310.6.12 NMAC - Rn, 8 NMAC 4.MAD.715.3 & A, 12/1/03; A, 7/1/04; A, 5/14/10]

8.310.6.13 P R I O R AUTHORIZATION AND

UTILIZATION REVIEW: All [medicaid] MAD services are subject to utilization review for medical necessity and program compliance. Reviews can be performed before services are furnished, after services are furnished and before payment is made, or after payment is made. See 8.302.5 NMAC, *Prior Approval and Utilization Review*. [Once enrolled, providers receive instructions and documentation forms necessary for prior approval and claims processing-] The provider must contact HSD or its authorized agents to request utilization review instructions. It is the provider's

responsibility to access these instructions or ask for paper copies to be provided, to understand the information provided, to comply with the requirements, and to obtain answers to questions not covered by these materials. When services are billed to and paid by a coordinated services contractor authorized by HSD, the provider must follow that contractor's instructions for authorization of services.

A. **Prior authorization:** Certain procedures or services [can] may require prior authorization from MAD or its designee. Contact lenses, either the original prescription or replacement, require prior authorization. Services for which prior authorization was obtained remain subject to utilization review at any point in the payment process.

B. **Eligibility determination:** [Prior authorization of services does not guarantee that individuals are eligible for medicaid. Providers must verify that individuals are eligible for medicaid at the time services are furnished and determine if medicaid recipients have other health insurance.] The prior authorization of a service does not guarantee that an individual is eligible for medicaid or other health care programs. A provider must verify that an individual is eligible for a specific program at the time the service is furnished and must determine if the eligible recipient has other health insurance.

C. **Reconsideration:** [Providers who disagree with prior authorization denials or other review decisions] A provider who disagrees with a prior authorization denial or another review decision may request a re-review and a reconsideration. See 8.350.2 NMAC, *Reconsideration of Utilization Review Decisions* [MAD-953].

[2/1/95; 8.310.6.13 NMAC - Rn, 8 NMAC 4.MAD.715.4 & A, 12/1/03; A, 5/14/10]

8.310.6.14 NON COVERED

SERVICES: [Vision services are subject to the limitations and coverage restrictions that exist for other medicaid services. Providers must notify recipients of medicaid covered and non covered services by medicaid prior to providing services. If recipients choose to obtain non covered services, they will be responsible for payment. See 8.301.3 NMAC, *General Noncovered Services* and 8.302.1 NMAC, *General Provider Policies*. Medicaid does not cover the following specific services:] Vision services are subject to the limitations and coverage restrictions that exist for other MAD services. See 8.301.3 NMAC, *General Noncovered Services* and 8.302.1 NMAC, *General Provider Policies*. MAD does not cover the following specific vision services:

A. orthoptic assessment and treatment;

B. photographic procedures, such as fundus or retinal photography and external ocular photography;

C. polycarbonate lenses other than for prescriptions for [high-power lenses or monocular vision] high acuity;

D. ultraviolet (UV) lenses;

E. trifocals;

F. progressive lenses;

G. tinted or photochromic lenses, except in cases of documented medical necessity. See Subsection D of 8.310.6.12 NMAC above;

H. oversize frames and oversize lenses;

I. low vision aids;

J. eyeglass cases;

K. eyeglass or contact lens insurance; and

L. anti-scratch, anti-reflective, or mirror coating.

[2/1/95; 8.310.6.14 NMAC - Rn, 8 NMAC 4.MAD.715.5 & A, 12/1/03; A, 7/1/04; A, 5/14/10]

8.310.6.15 REIMBURSEMENT:

A. [Vision service providers, except IHS and 638 facilities, 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 a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD:

B. Reimbursement to vision providers for covered services, procedures and other vision service appliances 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.

(a) The provider's billed charges must be the usual and customary charge for such services:

(b) "Usual and customary charge" refers to the amount that the individual provider charges the general public in the majority of cases for a specific procedure or service.] A vision service provider, except an IHS facility, must submit claims for reimbursement on the CMS 1500 claim form or its successor. See 8.302.2 NMAC, Billing for Medicaid Services. Once enrolled, a provider receives instructions on documentation, billing, and claims processing. Reimbursement to a provider 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 his 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.

[2/1/95; 8.310.6.15 NMAC - Rn, 8 NMAC 4.MAD.715.6 & A, 12/1/03; A, 5/14/10]

NEW MEXICO INTERSTATE STREAM COMMISSION

TITLE 19 NATURAL RESOURCES AND WILDLIFE

CHAPTER 25 ADMINISTRATION AND USE OF WATER - GENERAL PROVISIONS

PART 15 PECOS RIVER BASIN LAND MANAGEMENT FUND

19.25.15.1 ISSUING AGENCY:

New Mexico Interstate Stream Commission.
[19.25.15.1 NMAC - N, 5/15/2010]

19.25.15.2 SCOPE: This rule governs the administration of the Pecos river basin land management fund.
[19.25.15.2 NMAC - N, 5/15/2010]

19.25.15.3 STATUTORY AUTHORITY: Section 72-1-2.4 to -2.6 NMSA.
[19.25.15.3 NMAC - N, 5/15/2010]

19.25.15.4 DURATION: Permanent.
[19.25.15.4 NMAC - N, 5/15/2010]

19.25.15.5 EFFECTIVE DATE: May 15, 2010, unless a later date is cited at the end of a section.
[19.25.15.5 NMAC - N, 5/15/2010]

19.25.15.6 OBJECTIVE: The objective of this part is to implement the Pecos river basin land management fund, Section 72-1-2.5 NMSA.
[19.25.15.6 NMAC - N, 5/15/2010]

19.25.15.7 DEFINITIONS:
A. **"Commission"** means the New Mexico interstate stream commission.

B. **"Commission lands"** means the lands in the lower Pecos river basin acquired by the commission pursuant to Sections 72-1-2.2 and 72-1-2.4 NMSA.

C. **"Land management fund" or "fund"** means the Pecos river basin land management fund created pursuant to Section 72-1-2.5 NMSA.
[19.25.15.7 NMAC - N, 5/15/2010]

19.25.15.8 THE LAND MANAGEMENT FUND:

A. **Managing commission lands:** The commission shall manage

commission lands in a cost-effective manner so as to minimize any threat to public health and safety and adverse impacts to adjacent landowners, to provide benefits to local economies and to promote the general welfare of the lower Pecos river basin.

B. **Depositing revenues from commission lands:** The fund consists of appropriations, grants, donations or bequests to the fund, income from land and water rights purchased pursuant to Chapter 72, Article 1 NMSA, revenue from land sold pursuant to Chapter 72, Article 1 NMSA and income from investment of the fund or money otherwise accruing to the fund. Money in the fund shall be invested pursuant to Chapter 6, Article 10 NMSA. Money in the fund shall not revert to any other fund at the end of a fiscal year. Money in the fund shall be disbursed on warrants signed by the secretary of the department of finance and administration pursuant to vouchers signed by the director of the commission or the director's authorized representative.

C. **Administering the fund:** The commission shall use money from the land management fund to manage commission lands and to manage the commission's augmentation well fields in the lower Pecos river basin, including those augmentation well fields created pursuant to the strategic water reserve, Section 72-14-3.3 NMSA.
[19.25.15.8 NMAC - N, 5/15/2010]

HISTORY OF 19.25.15 NMAC:
[RESERVED]

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

16.6.10 NMAC, Naprapathic Assistants, filed 8/31/2004 is repealed effective May 24, 2010.

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

This is an amendment to 16.6.3 NMAC, Section 8, effective May 24, 2010.

16.6.3.8 FEES: All fees payable to the board are non-refundable.

A. **PROCESSING FEE:** \$75.00. The board [may] shall assess a processing fee for administrative processing of applications.

B. **INITIAL LICENSURE FEE:** \$500.00. The initial licensure fee shall be five hundred dollars (\$500.00) in addition to the processing fee.

C. **RENEWAL FEE:**

\$500.00. The renewal fee shall be five hundred dollars (\$500.00) annually due no later than July 1st of each year. In the event that a licensee fails to renew their license by the deadline of any year, the board is required to assess a late fee. If an initial license is granted on or after April 1st of any year but before the license expiration date of June 30th the license will be good until the following year and the licensee will not be required to pay the renewal fee for the first year.

D. LATE FEES:

(1) \$100.00 to 300.00. If a renewal is post-marked past the deadline of July 1st, the board is required to charge a late fee

(a) \$100.00. Late fee after July 1 through August 1

(b) \$200.00. Late fee after August 1 thru September 1

(c) \$300.00. Late fee after September 1 through October 1

(2) If a licensee renews their license by October 1, they must submit a renewal application accompanied by the fee and late fee. If the licensee fails to renew their license by October 1 the licensee must reinstate their license as set forth in the reinstatement procedures of the board.

E. **INACTIVE STATUS FEE:** \$100.00. A licensee may submit a request in writing to the board office to be placed on inactive status. The fee for inactive status is one hundred dollars (\$100.00) annually. Once a license is placed on inactive status, the licensee cannot practice naprapathy in New Mexico.

F. **REACTIVATION FROM INACTIVE STATUS:** \$50.00. If the inactive licensee requests reactivation from inactive status to active status, the licensee must complete an application for reactivation form provided by the board. The licensee will be required to pay the renewal fee. The applicant may be required to re-take the national examination at the discretion of the board.

G. **REINSTATEMENT FEE:** \$500.00. If the expired licensee requests to reinstate their license, the licensee will be required to pay a five hundred dollar (\$500.00) reinstatement fee, renewal fee, the processing fee and submit a reinstatement application [accompanied by the processing fee and renewal fee]. The applicant may be required to re-take the national examination at the discretion of the board.

H. **DUPLICATE LICENSE:** \$50.00. The fee for a duplicate of original certificate of licensure to replace a lost certificate of licensure, or a replacement certificate of licensure with a new name, or for a board verified copy of certificate of licensure shall be fifty dollars (\$50.00).

I. **OTHER MISCELLANEOUS CHARGES:**

(1) license list \$75.00
(2) license labels \$100.00
(3) list/labels for commercial use \$150.00

(4) ~~[copying; records request]~~
copy fee: per page [\$.50 per page] \$.25

~~[(5) copying; over and undersize copies \$1.00 per page]~~

~~[(6)] (5) rules and regulations~~

\$10.00

~~[(7)] (6) continuing education provider fee~~ \$75.00

[16.6.3.8 NMAC - N, 09-30-04; A, 07-31-08; A, 05-24-10]

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

This is an amendment to 16.6.4 NMAC, Section 8, effective May 24, 2010.

16.6.4.8 L I C E N S E EXPIRATION AND RENEWAL:

A. **License renewal:** Each licensee shall renew [his/her] their license annually, postmarked on or before ~~[on or before]~~ July 1st of every year by remitting to the board office a renewal fee as set forth in Subsection C of 16.6.3.8 NMAC with the renewal application form provided by the board. Continuing education hours shall be documented yearly and submitted with renewal application form.

B. **Licensee responsibility:** Renewal application notices will be mailed to the last known address on file with the board office. It is the responsibility of the licensee to keep the board informed of any changes in address or phone numbers. Failure to receive the application notice shall not relieve the licensee of the responsibility of renewing their license(s) before the expiration date.

C. **Late renewal after July 1st:** The licensee must pay a late fee as set forth in Subsection D of 16.6.3.8 NMAC. If a licensee renews their license by October 1st they must submit a renewal application accompanied by the renewal fee and the late fee.

D. **Late renewal after October 1st:** The licensee must reinstate the license. If the licensee fails to renew their license by October 1st the licensee must reinstate their license as set forth in the reinstatement procedures of the board. [16.6.4.8 NMAC - N, 09-30-04; A, 07-31-08; A, 05-24-10]

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

This is an amendment to 16.6.5 NMAC, Section 8, add Sections 9 and 10, effective May 24, 2010. The part name is also amended.

PART 5 INACTIVE STATUS, REINSTATEMENT

16.6.5.8 INACTIVE STATUS:

A. A current licensee in good standing is eligible to be placed on inactive status.

B. A licensee who wishes to be placed on inactive status shall notify the board ~~[administrator/staff]~~ office in writing before ~~[his/her]~~ their license expires. The board will acknowledge receipt of the notification.

C. A licensee shall pay the fees established by the board to be placed on inactive status by July 1st of every year.

D. An inactive licensee is required to submit proof of continuing education required by an active licensee ~~[Refer to Part]~~ as defined in 16.6.6 NMAC.

E. Once a license is placed on inactive status, the licensee shall not practice naprapathy in New Mexico.

F. A licensee on inactive status shall at all times comply with the provisions ~~[of code]~~ of the code of conduct. [16.6.5.8 NMAC - N, 09-30-04; A, 05-24-10]

16.6.5.9 REINSTATEMENT FROM INACTIVE STATUS: If an inactive licensee requests to reinstate their license; the licensee is required to:

A. pay the reinstatement fee and renewal fee established by the board to reinstate their license as defined in 16.6.3.8 NMAC;

B. submit a reinstatement application provided by the board office;

C. submit 30 continuing professional education (CPE) hours for every year licensee has been inactive as defined in 16.6.6 NMAC;

D. submit verification of licensure, if licensed or previously licensed in another state(s) or jurisdiction; verification must be sent directly to the board office from the issuing state(s) or jurisdiction; and

E. the applicant may be required to take the national examination at the discretion of the board.

[16.6.5.9 NMAC - N, 05-24-10]

16.6.5.10 REINSTATEMENT FROM EXPIRED STATUS: If an expired licensee requests to reinstate their license;

the licensee is required to:

A. pay the reinstatement fee, processing fee and renewal fee established by the board to reinstate their license as defined in 16.6.3.8 NMAC;

B. submit an reinstatement application provided by the board office;

C. submit 30 continuing professional education (CPE) hours for every year license has been expired as defined in 16.6.6 NMAC;

D. submit verification of licensure, if licensed or previously licensed in another state(s) or jurisdiction; verification must be sent directly to the board office from the issuing state(s) or jurisdiction; and;

E. the applicant may be required to take the national examination at the discretion of the board.
[16.6.5.10 NMAC - N, 05-24-10]

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

This is an amendment to 16.6.6 NMAC, Section 8, effective May 24, 2010

16.6.6.8 CONTINUING EDUCATION:

A. The licensee must report ~~[no less than 30]~~ thirty (30) hours of continuing professional education hours (CPE) per year at the time of renewal. Three ~~(3)~~ of the thirty ~~(30)~~ continuing education hours must be in ethics.

B. ~~[The board will accept any courses approved by the American naprapathic association. The naprapathic board may]~~ The naprapathic practice board shall make recommendations to the superintendent for approval of continuing education courses that meet standard requirements.

C. A licensee that has allowed a license to expire and is seeking reinstatement, must conform to continuing education licensure requirements ~~[before license will be granted]~~ from the date the license expired.

[16.6.6.8 NMAC - N, 09-30-04; A, 05-24-10]

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

This is an amendment to 16.6.7 NMAC, Section 8, add Sections 9 and 10, effective May 24, 2010.

16.6.7.8 LICENSURE BY ENDORSEMENT OR EXAMINATION:

The superintendent may, at the

recommendation from the board, issue a license to practice naprapathy to individuals who satisfy the following criteria:

A. is at least twenty-one years of age;

B. has graduated from a two-year college-level program or an equivalent program approved by the superintendent after consultation with the board;

C. has completed, in not less than three years, a four-year academic curriculum in naprapathy, that is approved by the board, and the person has successfully completed one hundred thirty-two hours of academic credit, including sixty-six credit hours in basic science courses with emphasis on the study of connective tissue, and sixty-six credit hours in clinical naprapathic science, theory and application;

[A:] D. [has] passed the national examination administered by the national board of naprapathic examiners and provides the board with evidence of successful completion or holds a current valid license in good standing as a naprapath in another state(s), jurisdiction, Sweden, Norway or Finland;

[B:] E. provide two (2) letters of recommendation from individuals licensed as a [naprapaths] naprapath, in good standing, at the time the letters were written;

[C:] E. provide one (1) letter of personal reference from anyone with whom the applicant has worked ~~[within]~~ with the past three years;

[D:] ~~for endorsement candidates only provide verification of licensure, in good standing, in another jurisdiction:]~~

G. verification of licensure, if licensed or previously licensed in another state or jurisdiction; verification must be sent directly to the board office from the issuing state(s) or jurisdiction; and;

H. has met all other requirements of the Naprapathic Practice Act.

[16.6.7.8 NMAC - N, 10-1-04; A, 05-24-10]

16.6.7.9 LICENSURE BY EXAMINATION DOCUMENTATION

REQUIREMENTS: Each applicant for licensure by examination must submit the required fees and following documentation:

A. completed application signed and notarized with a nonrefundable processing and initial licensure fee;

B. official transcripts from the accredited programs as defined in Subsections B and C of 16.6.7.8 NMAC;

C. certified copy of national board of naprapathic examination certificate;

D. provide two (2) letters of recommendation from individuals licensed as naprapaths, in good standing at the time the letter is written;

E. provide one (1) letter of personal reference from anyone with whom the applicant has worked, with the past three years; and

F. submit verification of licensure, if currently or previously licensed in another state(s) or jurisdiction, verification must come directly from the issuing state(s) or jurisdiction; verification must include the state seal or international equivalent and must attest to the status, issue date and license number.
[16.6.7.9 NMAC - N, 05-24-10]

16.6.7.10 LICENSURE BY ENDORSEMENT DOCUMENTATION

REQUIREMENTS: Each applicant for licensure by endorsement must submit the required fees and following documentation:

A. completed application signed and notarized with a nonrefundable processing and initial licensure fee;

B. official transcripts from the accredited programs as defined in Subsections B and C of 16.6.7.8 NMAC;

C. certified copy of national board of naprapathic examination certificate; or;

D. provide two (2) letters of recommendation from individuals licensed as naprapaths, in good standing at the time the letter is written;

E. provide one (1) letter of personal reference from anyone with whom the applicant has worked, with the past three years.

F. submit verification of licensure where the applicant holds a license in good standing to practice naprapathy; verification must be sent directly from the issuing state(s), jurisdiction or international board; verification must include a board state seal or international equivalent and must attest to the status, issue date and license number.

[16.6.7.10 NMAC - N, 05-24-10]

NEW MEXICO NAPRAPATHIC PRACTICE BOARD

This is an amendment to 16.6.9 NMAC, Section 8, effective May 24, 2010.

16.6.9.8 SUPERVISION OF INTERNS:

A. The purpose for the intern program in New Mexico shall be to safely complete advanced training for the graduating naprapathic intern in the areas including, but not limited to, history taking, exams, patient report of findings, treatment recommendations, treatment room control, staff management, general clinic policies, problem solving skills, team concepts, goal

setting, administrative skills, and other training the doctor may feel appropriate to complete the intern's advanced naprapathic training. This purpose enhances the professional training of the intern, the naprapathic college curriculum, the teaching skills of the doctor, the professional status of the profession of naprapathic and the professional standard of naprapathic health care available to New Mexico consumers.

B. Supervising doctor must have a current New Mexico license in "good standing" with the New Mexico board of naprapathic examiners and have been ~~[in active practice]~~ treating patients as a naprapath for at least three years.

C. Supervising doctor must have written verification from the college that intern is in a CCE, or board approved equivalent thereof, accredited naprapathic college sanctioned intern program, and the doctor must assure compliance to the guidelines of the intern program.

D. Supervising doctor must personally train intern in naprapathic procedure.

E. Supervising doctor must be physically in the same treatment room overseeing the intern to provide care for any patient.

F. Public must be informed that the intern is an "intern naprapath, not licensed in the state", and must sign an informed consent document approved by the board to this effect.

G. Supervising doctor may allow intern to assist in various exams and therapies after being trained and cleared by the supervising doctor on proper naprapathic procedures.

H. The supervising doctor must inform the college if the intern is deemed professionally ~~[incompetent in diagnosis or treatment or if the intern has other personal habits (alcoholism, drug addiction, moral turpitude, etc.) that would be unsafe for the public]~~ competent in the diagnosis or treatment of naprapathic patients.

I. A supervising doctor may not supervise more than two interns at one time.

J. Supervising doctor must register with the New Mexico board of naprapathic practice examiners the interns' names, the college they are from, and the term of the internship, and provide proof of malpractice insurance for the supervising doctor in minimum amount of \$1,000,000 per person - \$3,000,000 per occurrence coverage, at least 15 days before the first day of the internship.

K. The board is to be sent a copy of any ~~[regular]~~ report sent to the college involving the intern at the time the report is sent to the college.

[16.6.9.8 NMAC - N, 09-30-04; A, 05-24-

10]

NEW MEXICO STATE PERSONNEL BOARD

This is an emergency amendment to 1.7.4 NMAC Section 12 effective 5-19-10, adopted by the State Personnel Board at their meeting on 4-23-10.

1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. **Entrance salary:** Upon entrance to a classified position, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor zone must receive approval from the director prior to appointment.

B. **Legislative authorized salary increase:**

(1) Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within their assigned pay band.

(2) Employees with a salary at or above the maximum of the position's pay band shall not be eligible for an increase unless authorized by statute.

C. **Salary upon in pay band adjustment:** Upon in pay band adjustment, subject to director approval, budget availability and reflective of appropriate placement, agencies may increase an employee's salary up to ten percent (10%) during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than ten percent (10%) and the employee's base salary does not exceed the maximum of the assigned pay band. When reviewing requests for in pay band adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band.

D. **Salary upon promotion:** Upon promotion, an employee's salary subject to budget availability, should reflect appropriate placement within the pay band. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director. A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the pay band or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the pay band does not require the approval of the director. The salary of a promoted employee shall be in accordance with *Subsection B of 1.7.4.11 NMAC*.

E. **Salary upon demotion:** Upon demotion, an employee's salary shall be decreased to an hourly rate of pay

which does not result in more than a fifteen percent (15%) decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay band or the decrease is being made in accordance with *Paragraph (2) of Subsection F of 1.7.4.12 NMAC*.

F. **Pay allowance for performing first line supervisor duties:**

(1) An agency shall grant a pay allowance to an employee in a non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and shall be between 0% and 20% above the employee's base pay rate.

(2) When the supervisor duties are no longer being performed, the agency shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) Agencies shall require that a form, established by the director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

G. **Salary upon transfer:**

(1) Upon transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased up to ten percent (10%). The director may approve a salary increase greater than ten percent (10%) due to special circumstances that are justified in writing.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

H. **Salary upon pay band change:** When a change of pay band is authorized in accordance with the provisions of *1.7.4.9 NMAC, 1.7.4.10 NMAC, and/or 1.7.4.11 NMAC* the salaries of affected employees shall be determined in accordance with *Subsection C of 1.7.4.11 NMAC*. Employees whose pay band is adjusted upward or downward shall retain their current salary in the new pay band. Employees' salaries may be addressed through in pay band adjustment unless otherwise allowed by statute.

I. **Salary upon reduction:** The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with *Paragraph (2) of Subsection F of 1.7.4.12 NMAC*. An employee's salary should reflect appropriate placement within the pay band. The director may approve a salary reduction greater than fifteen percent (15%) due to special

circumstances that are justified in writing.

J. Salary upon return to work or reemployment: The salary of former employees who are returned to work or re-employed in accordance with the provisions of *1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC* shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay band.

K. Salary upon temporary promotion: Pay for a temporary promotion under *Subsection [E] F of 1.7.5.12 NMAC*, will be administered in accordance with *Subsection D of 1.7.4.12 NMAC*. The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

L. Temporary salary increase: An agency may, with the approval of the director, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability and/or a higher valued job. The director may approve temporary salary increases above the maximum of the employee's current pay band. The agency shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

M. Pay for dusk to dawn work: Employees shall be paid, in addition to their regular pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m.

(1) Agencies shall notify the director of any change to the rate of pay or hours of eligibility.

(2) An employee may waive the additional pay when requesting an alternative work schedule.

N. Salary adjustment to minimum: An employee whose salary falls below the minimum of the pay band will be adjusted in accordance with *Paragraph (2) of Subsection C of 1.7.4.11 NMAC*.

[1.7.4.12 NMAC - Rp, 1.7.4.10 NMAC, 11/14/02; A, 7-15-05; 1.7.4.12 NMAC - Rn, 1.7.4.13 NMAC & A, 12-30-05; A/E, 1-30-06; A, 3-31-06; A, 3-31-10; A/E, 5-19-10]

NEW MEXICO STATE PERSONNEL BOARD

This is an emergency amendment to 1.7.5 NMAC Sections 10 and 12 effective 5-19-10, adopted by the State Personnel Board at their meeting on 4-23-10.

1.7.5.10 APPLICATIONS:

A. The director shall establish application procedures which include, among other things, criteria that will ensure compliance with federal and/or state law. Information on gender, ethnicity, and age of applicants shall be utilized only for affirmative action and other non-discriminatory purposes.

~~[B.] An applicant's application shall be rejected if the applicant has been convicted of a felony or a misdemeanor and the provisions of the Criminal Offender Employment Act [NMSA 1978, Sections 28-2-1 to 28-2-6] permit such rejection.]~~

~~[C.] B.~~ The director shall reject an application and not accept any application from the applicant if the applicant:

(1) has made any false statement or produced any false document in support of the application; or

(2) has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

~~[D.] C.~~ In the event an application of an employee is rejected, under the provisions of *Subsection [E] B of 1.7.5.10 NMAC*, the applicant's employing agency shall take appropriate action and notify the director.

~~[E.] D.~~ An applicant whose application has been rejected may appeal to the board in accordance with the procedures established by the director.

[1.7.5.10 NMAC - Rp, 1 NMAC 7.5.10, 07/07/01; A, 11/14/02; A/E, 5/19/10]

1.7.5.12 SELECTION:

A. In accordance with the purpose of the *Personnel Act NMSA, Section 10-9-2*, selection shall be based solely on qualification and ability. Selection for any appointment to positions in the classified service shall be justified in writing and made from employment lists.

B. All employers subject to the Criminal Offender Employment Act [NMSA 1978, Sections 28-2-1 to 28-2-6] may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtaining public employment. Employer may only take into consideration a conviction after the applicant has been

selected as a finalist for the position.

~~[B.] C.~~ Agencies shall develop policies governing their use of the employment lists; such policies shall be submitted to the director for approval.

~~[C.] D.~~ Agencies shall be sensitive to creating diversity in the workplace.

~~[D.] E.~~ Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico department of education, division of vocational rehabilitation, the commission for the deaf and hard of hearing, or the commission for the blind, in accordance with the provisions of *NMSA 1978, Section 28-10-12*.

(1) The director shall certify the names of former employees who are currently receiving temporary total or permanent partial workers' compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of *1.7.10.12 NMAC*.

(2) The director shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per *1.7.10.10 NMAC*.

~~[E.] F. Temporary promotions:~~ Employees may be temporarily promoted for a period not to exceed 12 months to a temporarily or effectively vacant position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

~~[F.] G. Intra-agency transfers:~~ An agency may transfer an employee without the employee's consent to a position in the same classification within the same geographic location, which is 35 miles from the boundaries of the community in which the employee is employed or if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

~~[G.] H. Exempt to career appointments:~~ Employment in the exempt service shall not count towards the probationary period required by *Subsection A of 1.7.2.8 NMAC*.

~~[H.] I. Emergency appointments:~~ Emergency appointments shall be made in accordance with *1.7.2.12 NMAC*.

~~[I.] J. Reduction:~~ Employees may request a classification reduction to a position for which the agency certifies that the employee holds qualifications and abilities necessary for successful job performance.

~~[J.] K. Physical examinations:~~ Agencies may require physical examinations

of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the agency.

[K.] L. H u m a n immunodeficiency virus-related (AIDS) test: No agency shall require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. Agencies must adhere to the provisions of the *Human Immunodeficiency Virus Test Act NMSA 1978 Sections 24-2B-1 to 24-2B-8 Cum. Supp. 1993*. [1.7.5.12 NMAC - Rp, 1 NMAC 7.5.12, 07/07/01; A, 11/14/02; A, 7-15-05; A/E, 5-19-10]

NEW MEXICO STATE PERSONNEL BOARD

This is an emergency amendment to 1.7.11 NMAC Section 13, effective 4-27-10, adopted by the State Personnel Board at their meeting on 4-23-2010.

1.7.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of contemplated action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, the agency shall serve a notice of contemplated action on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has eleven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by mail, the employee receiving service shall have 3 additional calendar days in which to file a response.

B. Response to notice of contemplated action:

(1) A representative of the employee's choosing may respond in writing to the notice of contemplated action on behalf of the employee.

(2) If there is a request for an oral response to the notice of contemplated action,

the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

C. Notice of final action:

(1) If the employee does not respond to the notice of contemplated action the agency shall issue a notice of final action within 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final action no later than 11 calendar days from the date of receipt of the response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be at least 24 hours from the time of service of the notice of final action; and

(e) inform the employee of his or her appeal rights.

(4) Appeal rights:

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the board by delivering a written statement of the grounds for appeal to the state personnel director at 2600 Cerrillos Road, [P.O. Box 26127,] Santa Fe, New Mexico 87505 no later than 30 calendar days from the effective date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

(b) an employee who is covered by a collective bargaining agreement may either appeal the final disciplinary action to the board as stated above in *Subparagraph (a) of Paragraph (4) of Subsection C of 1.7.11.13 NMAC* or make an irrevocable election to appeal to an arbitrator pursuant to the collective bargaining agreement.

[1.7.11.13 NMAC - Rp, 1 NMAC 7.11.13,

07/07/01; A, 11/14/02; A, 7-15-05; A/E, 6/19/09; A, 9/15/09; A/E, 4/27/10]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

TITLE 6 PRIMARY AND SECONDARY EDUCATION

CHAPTER 33 EDUCATIONAL STANDARDS - VOCATIONAL EDUCATION

PART 3 P R E - APPRENTICESHIP PROGRAM

6.33.3.1 ISSUING AGENCY:
Public Education Department
[6.33.3.1 NMAC - N, 5/14/2010]

6.33.3.2 SCOPE: This rule applies to public school districts (high schools, charter schools and state supported schools) that provide for industry-taught or guided pre-apprenticeship programs for qualified high school students.
[6.33.3.2 NMAC - N, 5/14/2010]

**6.33.3.3 S T A T U T O R Y
AUTHORITY:** This rule is adopted pursuant to sections 9-24-8, 22-2-1, 22-2-2, 22-14-31 NMSA 1978.
[6.33.3.3 NMAC - N, 5/14/2010]

6.33.3.4 D U R A T I O N :
Permanent
[6.33.3.4 NMAC - N, 5/14/2010]

6.33.3.5 EFFECTIVE DATE:
May 14, 2010, unless a later date is cited at the end of a section.
[6.33.3.5 NMAC - N, 5/14/2010]

6.33.3.6 OBJECTIVE: To provide a framework for pre-apprenticeship program development at the local level for public school districts.
[6.33.3.6 NMAC - N, 5/14/2010]

6.33.3.7 DEFINITIONS:
A. "Apprentice" means a person at least 16 years old who is covered by a written agreement with an employer, or with an association of employers or employees acting as agent for an employer, and approved by the apprenticeship council, which apprentice agreement provides for not less than 2,000 hours required for any given trade by reasonably continuous employment for such person, for his or her participation in an approved schedule of work experience through employment and for at least 144 hours per year of related supplemental instruction.

B. "Apprenticeable trade or profession" means those on the United States department of labor (USDOL) list of officially recognized apprenticeable

occupations that meet the standards of apprenticeship. A skilled trade that possesses the following characteristics:

(1) customarily learned in a practical way through a structured, systematic program of on-the-job supervised training;

(2) clearly identified and commonly recognized throughout an industry;

(3) involves manual, mechanical or technical skills and knowledge that require a minimum of two thousand hours of on-the-job work experience; and

(4) requires related instruction to supplement on-the-job training.

C. "Apprenticeship" means a formal educational method for training a person in a skilled trade that combines supervised employment with classroom study.

D. "Apprenticeship council" means New Mexico state apprenticeship council, the registering authority in New Mexico.

E. "Career-technical courses" means a course with content that provides technical knowledge, and skills, and competency-based applied learning, and that aligns with the regulations for educational standards and student expectations for all New Mexico students who attend schools as defined in the scope of 6.29.1 NMAC.

F. "Course of instruction" means an organized and systematic program of study designed to provide the pre-apprentice with knowledge of the theoretical subjects related to one or more specific apprenticeable trades and that meets apprenticeship-related instruction requirements; provided that "course of instruction" may include hands-on training but does not include on-the-job training.

G. "Department" means public education department.

H. "Final next-step plan" means a next-step plan that shows that the student has committed or intends to commit in the near future to a four-year college or university, a two-year college, a trade or vocational program, an internship or apprenticeship, military service or a job.

I. "Industry instructor" means a person who is:

(1) working or has worked in an apprenticeable trade or profession for the minimum number of years required by the established industry practices of that particular trade to be an industry-recognized expert; or

(2) a career-technical faculty member at a public post-secondary educational institution.

J. "Interim next-step plan" means an annual next-step plan in which the student specifies post-high-school goals and sets forth the coursework that will allow the

student to achieve those goals.

K. "Local school district" means the school board of a local school district or the governing body of a charter school or state supported school.

L. "Nationally recognized trade organization" means an industry trade group, founded and funded to operate in a specific industry that is registered with the state apprenticeship council.

M. "Next-step plan" means an annual personal written plan of studies developed by a student in a public school or other state-supported school or institution in consultation with the student's parent and school counselor or other school official charged with coursework planning for the student that includes one or more of the following:

(1) advanced placement or honors courses;

(2) dual-credit courses offered in cooperation with an institution of higher education;

(3) distance learning courses;

(4) career-technical courses; and

(5) pre-apprenticeship programs.

N. "Pre-apprentice" means a public school student who is enrolled in a pre-apprenticeship program.

O. "Pre-apprenticeship program" means a local school board-approved course of instruction offered through a provider that results, upon satisfactory completion of the program, in a certificate of completion that is acceptable to an apprenticeship training program registered with the apprenticeship council.

P. "Provider" means an industry employer of an apprenticeable trade, a union, a trade association, or a post-secondary educational institution that provides a pre-apprenticeship program. The local school board shall only approve providers and pre-apprenticeship programs, including courses of instruction and industry instructors, that meet registered apprenticeship requirements of the apprenticeship council or the apprenticeship requirements of an appropriate nationally recognized trade organization.

Q. "Qualified high school student" means a student who is at least 16 years of age; is in the eleventh or twelfth grade; has available to schedule at least the number of electives required for the pre-apprenticeship program and commits those electives to the program; maintains compliance with the district attendance policy and code of conduct; and meets other local prerequisites outlined in memorandum of agreement between the provider and the local education agency.

R. "Registered apprenticeship program" means a program registered with the New Mexico state apprenticeship council.

[6.33.3.7 NMAC - N, 5/14/2010]

6.33.3.8 MEMORANDUM OF AGREEMENT:

A. Pre-apprenticeship programs shall be provided in accordance with the terms and conditions of a uniform memorandum of agreement (*hereafter* "MOA"), which supersedes all previous agreements, versions and addenda. This agreement applies to public school districts, including a charter school or charter school district, a state supported educational institution and a state-chartered school (*hereafter* "district"), high school students who attend public school districts, and pre-apprenticeship providers (*hereafter* "providers") in New Mexico. School districts and charter schools may complete agreements with multiple providers.

B. The MOA shall include provisions stating the following: The primary purposes of the pre-apprenticeship program are to allow school districts to provide for industry taught or guided pre-apprenticeship programs for qualified high school students. The pre-apprenticeship program will allow for the local school board to approve providers and pre-apprenticeship programs, including courses of instruction and industry instructors that meet apprenticeship requirements of the state apprenticeship council or the apprenticeship requirements of an appropriate nationally recognized trade organization. Pre-apprenticeship programs shall meet department content and performance standards and shall be provided at no cost to students. The pre-apprenticeship program is designed so that pre-apprentices may earn elective credits toward high school graduation and meet requirements for apprenticeship-related supplemental instruction or post-secondary education course credits. The pre-apprenticeship program makes available licensure exemptions for the provider's industry instructor(s). Pre-apprenticeship programs may be offered during the school day whenever possible, may be conducted at industry locations, including union halls or other industry training facilities; at existing school facilities, if available; or at any other location approved by the local school board.

C. The MOA specifies the means by which the state will provide equal opportunities to all qualified high school students who wish to participate in the pre-apprenticeship program.

D. This MOA shall provide the following duties and responsibilities of the pre-apprenticeship industry provider. The industry provider shall:

(1) provide an industry provider application form that addresses the name of pre-apprenticeship course of instruction or program offered by provider; program start date; name of course to include student

teacher accountability reporting system (STARS) course code number, method of delivery, course alignment and if dual credit is offered; identification of tools needed for program; identification of supplies provided for program; identification of instructional materials provided for the program; evaluation process of program; method of grade reporting; method of attendance recording; how students are recruited; how students are accepted into program, retained and dismissed; circumstances under which the program may terminate; continuation plan for the pre-apprenticeship program that provides the student the opportunity to complete coursework that will bear the previously agreed upon semester credit; and identify an industry approved instructor;

(2) provide an industry instructor's application form to include the name of pre-apprenticeship course of instruction, or program; instructor's identifying information to include name, address, phone, gender, date of birth, approving industry entity, instructor resume and a completed character and fitness questionnaire to include the following:

(a) have you ever been disciplined, reprimanded, suspended or discharged, from any employment because of allegations of misconduct?

(b) have you ever resigned, entered into a settlement agreement, or otherwise left employment following an allegation of misconduct?

(c) is any action now pending against you for alleged misconduct, including application discrepancies?

(d) have you ever failed to fulfill the terms of a contract?

(e) do you currently have any outstanding criminal charges, warrants of arrest, or conditions of probation pending against you in New Mexico or in any other state?

(f) have you ever been fingerprinted as a result of any arrest or detainment for any crime or violation of the law?

(g) have you ever pled guilty to, or been convicted of, any crime or violation of law, including entering a plea of no contest or receiving a deferred or suspended sentence?

(h) are you currently delinquent in payment of court-ordered child support?

(i) have you ever had a court-ordered screening for alcohol or drug dependence?

(3) employ a method of qualifying the industry instructor that includes the following requirements:

(a) background checks:

(i) industry instructors shall be required to undergo a background check as provided for licensed school employees in Section 22-10A-5 NMSA 1978;

(ii) the school district or charter school may act on the information

received from the background check and refuse to approve a person as an industry instructor; and

(iii) the district shall not allow persons who have not been vetted through the background check process to have unsupervised contact with students;

(b) licensure:

(i) licensure requirements shall not apply to industry instructors;

(ii) a complete resume demonstrating expert; verification by experience, license or certification may qualify as an industry instructor; and

(iii) a department licensed teacher may qualify as an industry instructor;

(c) adhere to the district confidentiality guidelines;

(4) designate a representative to review and sign the completed MOA with the understanding that only a MOA endorsed by all parties shall constitute a pre-apprenticeship program;

(5) determine, in collaboration with the district, the required academic standing of each student eligible to participate in the pre-apprenticeship program;

(6) employ a method of qualifying the student for pre-apprenticeship that demonstrates that the student has the appropriate skills and maturity to benefit from the instruction requested;

(7) provide information and orientation, in collaboration with the district, to the student and parent or guardian regarding the responsibilities of pre-apprenticeship including academic rigor, time commitments, and behavioral expectations associated with taking pre-apprenticeship courses and the importance of satisfactorily completing the pre-apprenticeship credits attempted in order for credit to be awarded;

(8) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(9) evaluate progress of pre-apprenticeship students on the issue of academic performance and provide reports, as needed, to the district;

(10) retain the official grade report of the pre-apprenticeship student that records the term of enrollment, courses/credits attempted, courses/credits completed, grades and grade point average earned;

(11) provide final grades to the district for each pre-apprenticeship student;

(12) deliver final grades for all pre-apprenticeship students to the district with sufficient time to be included with final grades; this schedule shall be defined by the parties in the MOA and shall address

the time frame appropriate for determining student graduation from high school;

(13) issue to student a certificate of completion acceptable to an apprenticeship training program; the certificate shall identify:

(a) coursework showing industry standards and benchmarks completed;

(b) competency level of skills attained; and

(c) certifying signature from district and instructor verifying student level of completion;

(14) comply with data collection and reporting.

E. The MOA shall provide the following duties and responsibilities of the district. The district shall:

(1) work collaboratively with approved provider to recruit students;

(2) make available its facility for recruitment;

(3) ensure adequate information is available to students regarding participation in a pre-apprenticeship program;

(4) ensure the pre-apprenticeship course of instruction is identified in the next step plan and shows that the student has committed or intends to commit necessary electives;

(5) ensure that upon successful completion of coursework designated as elective coursework, the student may be awarded elective credit toward high school graduation;

(6) ensure that upon successful completion of coursework designated as core coursework, the student may be awarded core credit toward high school graduation;

(7) employ a method of qualifying the student for pre-apprenticeship based on factors which may include academic performance review, use of next step plan, assessments, advisement and career guidance, and recommend enrollment in the pre-apprenticeship program with evidence that the student has the appropriate skills and maturity to benefit from the instruction requested;

(8) provide information and orientation to students about career opportunities within the apprenticeship occupation during student advisement and formulation of annual next step plan;

(9) ensure counselors or advisors to pre-apprenticeship students shall have working knowledge about pre-apprenticeship programs;

(10) identify the location for delivery of the pre-apprenticeship program;

(11) designate a representative to collaborate with the provider to reach agreement on student participation in the pre-apprenticeship program;

(12) approve student participation in the pre-apprenticeship program on a semester by semester basis;

(13) provide information and orientation, in collaboration with the pre-apprenticeship industry provider, to the student and student's family regarding the responsibilities of pre-apprenticeship enrollment including academic rigor, time commitments, and behavioral expectations associated with taking pre-apprenticeship courses and the importance of satisfactorily completing the credits attempted in order for pre-apprenticeship to be awarded;

(14) inform students of course requirement information which includes course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(15) make clear to students that if they fail or withdraw from pre-apprenticeship classes that they were intending to use for elective high school credit that they will have to make up those credits in order to graduate; the pre-apprenticeship course grade will appear on the student high school transcript; and

(16) record, unchanged, the grade given to the pre-apprenticeship student by the pre-apprenticeship provider on each student high school transcript.

F. The MOA shall provide the following data collection and reporting:

(1) Each semester, the student application form shall be used to document each student request for enrollment in pre-apprenticeship courses and the review and approval process within the district and pre-apprenticeship provider. The pre-apprenticeship provider may require additional forms and information from the student.

(2) In the event of scheduling changes, the pre-apprenticeship provider may change course information upon mutual agreement with the school district.

(3) Data and reporting will be tracked with student teacher accountability reporting system (STARS) codes by assigning a numeric identifier to a pre-apprenticeship course.

(4) Each district and pre-apprenticeship provider shall devise procedures for reporting pre-apprenticeship data from the both the provider application and student application forms utilizing the public school student identification numbers.

G. Term and limitations of agreement

(1) Initial term. MOA shall identify the initial implementation term of the pre-apprenticeship program and contain signatures from all parties.

(2) Program cessation. A provider wishing to cease its pre-apprenticeship program shall notify the superintendent according to the agreed upon timeframe in the provider's application form.

(3) Program continuation.

Upon notification of cessation of a pre-apprenticeship program, the local school district and provider must agree on a continuation plan for the pre-apprenticeship program that provides the student the opportunity to complete coursework that will bear the previously agreed upon semester credit.

(4) The MOA shall automatically renew for additional fiscal years unless either party notifies the other party of their intent not to renew 60 days before the end of the fiscal year.

[6.33.3.8 NMAC - N, 5/14/2010]

6.33.3.9 P R E - APPRENTICESHIP PROGRAM IMPLEMENTATION:

A. A pre-apprenticeship program must have an existing MOU as outlined in 6.33.3.8 NMAC.

B. A pre-apprenticeship course of instruction must:

(1) be provided at no cost to students, with the exception of course-specific fees that may apply;

(2) meet department content and performance standards;

(3) make available high school graduation credit that may be offered as elective; and

(4) allow for instruction to be conducted at existing training locations such as:

- (a) industry training locations;
- (b) union halls; and
- (c) existing school facilities.

C. A student withdrawal process shall be included and addressed at the discretion of the principal or principal's designee. Student withdrawal from the program shall be subject to the local district's policy regarding eligibility and enrollment as outlined by school governance and their guidance counselor/advisors.

(1) A student may be withdrawn from the program at the discretion of the principal. Cessation of student participation is subject to local districts policy regarding eligibility and enrollment as outlined by school governance and their guidance counselor/advisors.

(2) Comply with the district and industry or institution provider student code of conduct and other industry or institutional policies.

D. The student will comply with the following assurances and responsibilities:

(1) provide a student application form that addresses the name of pre-apprenticeship program; student identification to include name address, phone, gender, date of birth, student teacher accountability reporting system (STARS) student identification number;

(2) be at least sixteen years of age;

enrolled in eleventh or twelfth grade; have at least the number of electives required for the pre-apprenticeship program applied for and commit, by identification on the student's next step plan, those electives to the program and meet other requirements of the pre-apprenticeship program approved by the local education agency; maintain compliance with the district attendance policy and code of conduct; and meet other local prerequisites outlined in memorandum of agreement between the provider and the local education agency;

(3) discuss potential pre-apprenticeship courses with the appropriate district and pre-apprenticeship provider staff, including pre-apprenticeship provider admission and registration requirements, course requirements, credits to be attempted, credits to be awarded, scheduling under pre-apprenticeship, and implications for failure to successfully complete the course;

(4) qualify for pre-apprenticeship courses offered by meeting pre-apprenticeship provider and district requirements to enroll as a pre-apprenticeship student;

(5) comply with the district and industry providers' student code of conduct;

(6) return textbooks and unused course supplies to the district when the student completes the course or withdraws from the course (subject to provisions in Subsection B of Section 22-15-10 NMSA 1978 regarding lost or damaged instructional material);

(7) arrange transportation to the pre-apprenticeship program instructional site;

(8) be responsible for course-specific fees;

(9) obtain course requirements for each course, including course prerequisites, if any, course content, grading policy, attendance requirements, course completion requirements, performance standards, and other related course information;

(10) meet the prerequisites, if any, and requirements of the course(s) to be taken;

(11) obtain approval for enrolling in the pre-apprenticeship program each semester by acquiring all necessary signatures on the student application form; and

(12) register for courses during the district's registration periods.

E. Data reporting will be aligned with student teacher accountability reporting system (STARS) data requests to the public education department and subject to provisions of Section 22-8-13 NMSA 1978.

[6.33.3.9 NMAC - N, 5/14/2010]

6.33.3.10 P R E - APPRENTICESHIP PROGRAM

FORMS: To expedite the transmission of necessary information between the district and the provider, specific forms are required and are as follows:

A. The CTWEB/Pre-app: P-1 memorandum of agreement. The P-1 form provides the terms of the agreement by and between the industry provider and the local school district and becomes the master agreement. The agreement shall include, but not be limited to the following information:

- (1) legal names of the parties;
- (2) eligibility and approval requirements;
- (3) duties and responsibilities of the industry provider;
- (4) duties and responsibilities of the district; and
- (5) full name, signature and date of responsible parties approved to implement.

B. The CTWEB/Pre-app: P-2 industry provider application form. The P-2 form provides the name of the pre-apprenticeship program, legal name and contact information of industry provider or post secondary partnership, if applicable. The provider application shall include, but not be limited to the following information:

- (1) program start date;
- (2) course information, to include pre-requisites, recruitment and acceptance for the program;
- (3) verification of alignment to New Mexico standards and benchmarks;
- (4) identifying tools, supplies, and instructional materials for the program;
- (5) method of delivery, evaluation, grading, attendance methods for reporting;
- (6) plan for continuation if provider wishes to cease its pre-apprenticeship program;
- (7) circumstances for dismissal of a student;
- (8) location where the pre-apprenticeship program will be conducted; and
- (9) full name, signature and date of responsible parties approved to implement.

C. The CTWEB/Pre-app: P-3 instructor application form. The P-3 form shall include, but not be limited to information which provides the instructor name, contact information, industry approval and qualification. Character and fitness detail is required as well as oath certification statement and signature.

D. The CTWEB/Pre-app: P-4 student application form. The P-4 form shall include but not be limited to the following information:

- (1) student name, contact, eligibility and reporting information;
- (2) school information;
- (3) assurances and responsibilities of the student, read and agreed by signature; and
- (4) full name, signature and date of

responsible parties approval with completed application.

E. The CTWEB/Pre-app: P-5 skill achievement certification form. The P-5 form serves as a certificate of completion that is acceptable to an apprenticeship training program. It shall include but not be limited to the full name, signature and date of responsible parties involved in the training detail.

[6.33.3.10 NMAC - N, 5/14/2010]

History of 6.33.3 NMAC: [RESERVED]

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

This is an amendment to 10.8.2 NMAC, Section 16, effective May 14, 2010.

10.8.2.16 TERMS AND CONDITIONS OF LICENSE:

A. Carrying only handguns listed on license. No person shall carry a concealed handgun of a different category or higher caliber than is indicated on the license issued to that person by the department. A licensee shall only carry one (1) concealed handgun at any given time.

B. Consumption of alcohol prohibited. No person shall consume alcohol while carrying a concealed handgun.

[B-] C. Carrying while impaired. Pursuant to NMSA 1978 Section 30-7-4, no person shall carry a concealed handgun while impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications.

[C-] D. Display of license on demand. A licensee carrying a concealed handgun on or about his person in public shall, upon demand by a peace officer, display his license to carry a concealed handgun.

[D-] E. Prohibited acts. A licensee shall not deface, alter, mutilate, reproduce, lend, transfer, or sell a license. A licensee shall adhere to NMSA 1978 Section 30-7-4 as it pertains to negligent use of a deadly weapon.

[E-] F. Carrying prohibited on private property. In addition to other limitations stated in the act, a licensee may not carry a concealed handgun on or about his person on private property that has signs posted prohibiting the carrying of concealed weapons or when verbally told so by a person lawfully in possession of the property.

[F-] G. Carrying prohibited in preschools. As used in Subsection C of NMSA 1978 Section 29-19-8, preschool means a child care facility, whether home-based or center-based, whether or not the facility is licensed, registered, or regulated, that provides care to infants, toddlers, and

children aged 5 and younger.

[G-] H. Indicia of licensure. No person who is not a law enforcement officer, may carry a badge, patch, card, or any other indication of authority to carry a concealed handgun in New Mexico other than the license issued by the department or a license issued by a state that has been accepted by transfer, recognition or reciprocity by New Mexico pursuant to the act.

[H-] I. Notice of change in circumstances. A licensee shall, within 10 calendar days, notify the department in writing of any of the following:

- (1) adjudication of mental incompetence;
- (2) commitment to a facility for the treatment of mental illness;
- (3) commitment to a facility for treatment of addiction to alcohol, controlled substances, or other drugs;
- (4) issuance of an order of protection by a court;
- (5) indictment for or charge with a felony or one of the misdemeanor offenses described in Subsection B of NMSA 1978 Section 29-19-4;
- (6) is no longer a full time salaried law enforcement officer; and
- (7) is required to turn in the license within 10 calendar days of the change.

[10.8.2.16 NMAC - N, 11-26-03; A, 11-30-05; A, 5-14-10]

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

This is an amendment to 10.10.3 NMAC, Sections 3, 10, 11, 12, 14, 15, 16, 18 and 19, effective 5/14/2010.

10.10.3.3 STATUTORY AUTHORITY: 42 U.S.C. 3751 (a), P.L. 108-447, "Consolidated Appropriations Act, 2005", NMSA 1978 Section 9-19-6, and P.L. 109-162.

[10.10.3.3 NMAC - N, 8/31/2009; A, 5/14/2010]

10.10.3.10 DISTRIBUTION OF FORMULA FUNDS: Variable pass-through: A minimum of [49:29] 50.83% must be passed through to local units of government (as defined in 10.10.3.8 NMAC). States may exceed the minimum pass-through by providing funds not used at the state level to local units of government. [10.10.3.10 NMAC - N, 8/31/2009; A, 5/14/2010]

10.10.3.11 AUTHORIZED PROJECTS/PROGRAM AREAS:

A. Authorized programs for funding are listed below. Approved program purpose areas:

(1) law enforcement;
 (2) planning, evaluation and technology improvement programs, limited to the evaluation component only.

B. Program areas will be further described in application packets.

~~[B.] C.~~ Applicants may request copies of the New Mexico drug strategy by writing the department of public safety, grants management bureau, Post Office Box 1628, Santa Fe, New Mexico 87504 or by calling (505) 827-3347 or (505) 827-9112. [10.10.3.11 NMAC - N, 8/31/2009; A, 5/14/2010]

10.10.3.12 APPLICATION REQUIREMENTS: All applicants for funding under the JAG formula grant program must adhere to the following procedures.

A. Application deadline: All [applications] application packets must be received at the grants management bureau, department of public safety ~~[postmarked or hand-delivered]~~ no later than 5:00 P.M. on the date stated in the application packet. It is the responsibility of the applicant to ensure that the application is received by the grants management bureau, department of public safety. Any application not received ~~[or postmarked]~~ by the deadline indicated in the application will not be considered.

B. Each applicant shall forward **an original and six copies** of the application to the grants management bureau, 4491 Cerrillos Road, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, phone number (505) 827-3347.

C. Single purpose area rule: Only applications proposing to carry out a project in one single program area will be accepted for funding consideration.

D. Proposed project term: The term of the project proposed in the application shall be fully disclosed in the application. The state recognizes that continued funding of successful projects is paramount to the success of the overall program. Projects should be designed to be consistent with the multi-year state strategy.

E. Certification requirements: Drug free workplace requirement: This applies to state agencies **ONLY**. Title V, Section 5153, of the Anti-Drug Abuse Act of 1988 provides that all state agencies receiving federal funds shall certify and submit proof to the granting agency that it will provide a drug-free workplace.

F. Debarment, suspension, ineligibility, and voluntary exclusion: All applicants for funds will be required to complete a certification stating that the applicant has not been suspended, debarred, or is otherwise ineligible to participate in this federal program.

~~[G.] Disclosure of lobbying~~

~~activities requirement: Section 319 of Public Law 101-121 generally prohibits recipients of federal contracts, grants and loans from using appropriated funds for lobbying the executive or legislative branches of the federal government in connection with a specific contract, grant or loan. Section 319 also requires each person who requests or receives a federal contract, grant, cooperative agreement, loan or a federal commitment to insure or grant a loan, to disclose lobbying. The term "recipient" as used in this context does not apply to Indian tribes, organizations, or agencies.]~~

~~[H.] G.~~ Disclosure of federal participation requirement: Section 8136 of the Department of Defense Appropriations Act (Stevens Amendment) enacted in October 1988, requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving federal funds, including but not limited to state and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with federal money, and (2) the dollar amount of federal funds for the project or program. This applies only to subgrantees who receive \$500,000 or more in the aggregate during a single funding year.

~~[I.] H.~~ General financial requirements: Grants funded under the formula grant program are governed by the provisions of 28 CFR Part 66, Common Rule, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Government and the office of management and budget (OMB) circulars applicable to financial assistance. These circulars along with additional information and guidance contained in "OJP financial guide for grants" (current edition), are available from OJP and from the grants management bureau. This guideline manual provides information on cost allowability, methods of payment, audits, accounting systems and financial records.

~~[J.] I.~~ Audit requirement: Agencies applying for federal funds must assure that they will comply with the appropriate audit requirement. Subgrantees expending \$500,000 or more in a fiscal year in all sources of federal funding shall have a single-organizationwide audit conducted in accordance with OMB circular A-133, as amended.

~~[K.] J.~~ Confidential funds requirement: State agencies and local units of government may apply for and receive grants to conduct law enforcement undercover operations. Each agency must certify that it will develop policies and procedures to protect the confidentiality of the operations. Agencies must also certify

that they will comply with the office of justice programs financial guide current edition.

~~[L.] K.~~ Civil rights requirement: The applicant certifies that it will comply with the non-discrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; Title II of the Americans With Disabilities Act of 1990 42 U.S.C. 12131; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Nondiscrimination Regulations 28 CFR Part 35 and 42, Subparts C, D, E and G; and Executive Order 11246, as amended by Executive Order 11375, and their implementing regulations. This applicant further certifies that if a federal or state court or the administrative agency makes a finding of discrimination, it will immediately forward a copy of the finding to the grantor agency, for submission to the office of civil rights, office of justice programs, U.S. department of justice within 30 days of receipt.

[10.10.3.12 NMAC - N, 8/31/2009; A, 5/14/2010]

10.10.3.14 APPLICATION FORMAT: All applications should follow the format outlined below:

A. Applications should be typewritten except for the coversheet. The original copy must be stapled in the upper left hand corner and two-hole punched at the top of the page.

B. Applications are to be typed, single spaced. Font size must be comparable in size to 12 point times roman or courier.

C. Adhere to page limits for each part of the grant application.

D. Place footer in lower right hand corner with a project title and page number.

E. Include all required forms, such as signed certifications.

[10.10.3.14 NMAC - N, 8/31/2009; A, 5/14/2010]

10.10.3.15 ALLOWABLE / UNALLOWABLE EXPENSES: In order to ensure the most efficient and effective use of grant funds, applicants must adhere to the following.

A. Administrative expenses: Applicants shall limit total administrative expenses to no more than five percent (5%) of their grant award. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of administrative costs. The fiscal agency may only request the five percent (5%) administrative expense proportionate to the request for reimbursement.

B. General salaries and personnel costs: Payment of personnel costs with grant funds is permitted if the costs are part of an approved program or project. Applicants must provide a copy of their agency's overtime policy with the grant application for review and prior approval by the department of public safety prior to overtime reimbursement. General salary and personnel costs must:

(1) reflect an after-the-fact distribution of the actual activity of each employee;

(2) account for the total activity for which each employee is compensated.

C. Expenditures for purchase of services, evidence, and information (confidential funds): Formula grant funds which may be used for confidential expenditures are defined as funds used for the purchase of services, purchase of physical evidence and information, including buy money, flash rolls, etc. Guidelines related to confidential expenditures are found in OJP financial guide for grants. The grants management bureau has the authority to approve the allocation, use, and expenditure of formula funds for confidential expenditures. **All applications containing projects which utilize funds for confidential expenditures must contain an assurance that the guidelines found in OJP financial guide for grants will be followed.**

D. Land acquisition: ~~[Acquisition of land with grant funds is prohibited]~~ Funds made available under this grant may not be used for land acquisition.

E. Audit costs: Expenses associated with conducting audits of programs/projects funded with formula grants are allowable expenses and may be paid with administrative funds, program funds, or a combination of both.

F. ~~[Non=]~~ Supplanting: Formula grant funds shall not be used to supplant applicant funds, but will be used to increase the amount of such funds that would, in the absence of federal aid, be made available for law enforcement activities.

G. ~~[Participation in drug enforcement administration task forces: Formula grant funds may be used for expenses associated with participation of the state or units of local government, or combination thereof, in the state and local task force program established by the drug enforcement administration (Section 504 (c) of the act).]~~ Infrastructure investment: Funds made available under this grant may not be used for infrastructure investment. [10.10.3.15 NMAC - N, 8/31/2009; A, 5/14/2010]

10.10.3.16 REPORTING AND OTHER REQUIREMENTS:

A. Accountability and

transparency: a strong emphasis will be placed on accountability and transparency, it is essential that all funds be tracked, accounted for, and reported. Sub-recipients must be prepared to track and report on the specific outcomes and benefits attributable. Each sub-recipient will be responsible for having completed reports sent to the grants management bureau **no later than [five] 15 days after the end of each calendar quarter.** Each recipient that ~~[received]~~ receives JAG funds shall submit a report to the grants management bureau that contains, at a minimum:

(1) the total amount of JAG funds received;

(2) the amount of JAG funds that was expended or obligated;

(3) a detailed list of all projects or activities for which JAG funds were expended or obligated;

(a) the name of the project or activity;

(b) a description of the project or activity;

(c) an evaluation of the completion status of the project or activity; and,

~~[(d) for infrastructure investments made by state or local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this act, and the name of the person to contact at the agency if there are concerns with the infrastructure investment.]~~

B. Detailed information to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the director to the office of management and budget.

C. To assist in fulfilling the accountability objectives, as well as the department's responsibilities under the Government Performance and Results Act of 1993 (GPRA), (Public Law 103-62), applicants who receive funding under this solicitation must provide data that measures the result of their work.

D. Recipients will also be required to submit quarterly progress reports, either semi-annually or annually. **The department of public safety may withhold the reimbursement of funds if any award recipient is delinquent in submitting the required progress reports.**

E. Financial requirements: Recipient agrees to comply with the financial and administrative requirements set forth in the current edition of the office of justice programs (OJP) financial guide.

F. Audit requirements: The recipient agrees to comply with the organizational audit of OMB circular A-133, audit of states, local government, and non-

profit organizations, as further described in the current edition of the OJP financial guide, chapter 19.

~~[G. Non-supplanting: Formula grant funds shall not be used to supplant applicant funds, but will be used to increase the amount of such funds that would, in the absence of federal aid, be made available for law enforcement activities.]~~ [10.10.3.16 NMAC - N, 8/31/2009; A, 5/14/2010]

10.10.3.18 S E L E C T I O N PROCESS: The department of public safety, in conjunction with the drug enforcement advisory council (DEAC), will make a decision on each complete application. The failure of an application to conform to state program priorities, as outlined in the New Mexico drug strategy, or to meet criteria set forth in this document may ~~[constitute reason for disapproval]~~ deem the application ineligible. The selection process is as follows.

A. Upon receipt ~~[of applications],~~ the grants management bureau staff will review the applications for ~~[eligibility,]~~ completeness, ~~and compliance].~~

B. ~~[Eligible]~~ Complete applications will be forwarded to a panel for review and rating. The selection panel, through the grants management bureau, will submit their recommendations for consideration to the cabinet secretary.

C. The cabinet secretary of the department of public safety has the final authority in the awarding of grants.

D. All applicants will be notified in writing of the outcome of their application no later than 30 days after the application deadline.

E. U n s u c c e s s f u l ~~[applications]~~ applicants may appeal if the applicant ~~[feels]~~ believes any federal or state regulation involving selection was violated. Appeals must be received by the New Mexico department of public safety, grants management bureau within 15 calendar days of receipt of the outcome notification. A three-member appeal panel shall review the alleged violation, decide on its validity, and make a recommendation to the cabinet secretary of the department of public safety. If an appeal is received by the department of public safety all funding decisions will be delayed until the appeal has been reviewed and a final decision has been made by the cabinet secretary. The cabinet secretary's decision shall be final.

F. The New Mexico department of public safety reserves the right to reduce any request based on funding availability and other factors as determined by the New Mexico department of public safety.

[10.10.3.18 NMAC - N, 8/31/2009; A,

5/14/2010]

10.10.3.19 SUSPENSION AND TERMINATION OF FUNDING:

The state may, after reasonable notice and [failure—of] informal efforts to effect resolution, suspend, in whole or in part, [or after reasonable notice and opportunity for a hearing, terminate, in whole or in part,] funding for program or project which fails to conform to the requirements [or statutory objectives] of the program or financial regulations and policies or the terms and conditions of its grant award. [Hearing and appeal procedures for termination actions are set forth in department of justice regulations at 28 CFR part 18.]

[10.10.3.19 NMAC - N, 8/31/2009; A, 5/14/2010]

NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.28 NMAC, Sections 6 through 9, effective April 26, 2010. The part name is also amended.

PART 28 DISTRIBUTION OF VOTER [IDENTIFICATION] INFORMATION CARDS

1.10.28.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 336, Laws 2007. The purpose of the amendment is to ensure that the secretary of state shall send a voter [identification] information card to each active registered voter in each county between sixty (60) and seventy-five (75) days before each general election.

[1.10.28.6 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010]

1.10.28.7 DEFINITIONS:

A. “County” means any county in this state.

B. “County register” means an official file of original certificates of registration.

C. “General election” means the election held pursuant to Article XX, Section 6, constitution of New Mexico.

D. “Voter” means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of New Mexico.

E. “Voter file” means all voter registration information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on data recording media and certified by the county clerk as the source of all information

required by the Voter System Records Act (Section 1-5-1 through 1-5-31 NMSA 1978).

F. “Voter’s address” means the address where the voter receives mail delivery.

G. “Voter [identification] information card” means a card indicating the voter’s name; address; and voting precinct and the name of the current county clerk in that county.

[1.10.28.7 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010]

1.10.28.8 V O T E R [IDENTIFICATION] INFORMATION CARD MAILING:

A. The secretary of state shall send a voter [identification] information card to each active registered voter in each county between sixty (60) and seventy-five (75) days before each general election, based on information extracted from the county register and county voter file.

B. The voter [identification] information card shall be mailed by first class mail to the voter’s address.

[1.10.28.8 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010]

1.10.28.9 SECRETARY OF STATE REIMBURSEMENT:

The secretary of state shall, pursuant to 1.10.26 NMAC and the National Voter Registration Act of 1993, instruct each county clerk to mark as inactive any voter whose [identification] information card is returned as undeliverable.

[1.10.28.9 NMAC - N, 9-30-2005; A/E, 3/16/2010; A/E, 4/26/2010]

End of Adopted Rules Section

Submittal Deadlines and Publication Dates 2010

Volume XXI	Submittal Deadline	Publication Date
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
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Issue Number 23	December 2	December 15
Issue Number 24	December 16	December 30

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