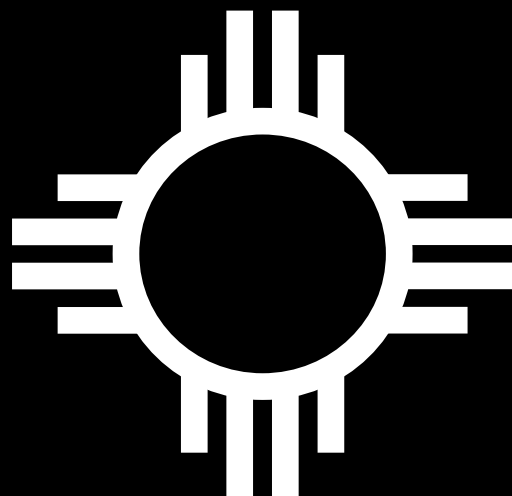


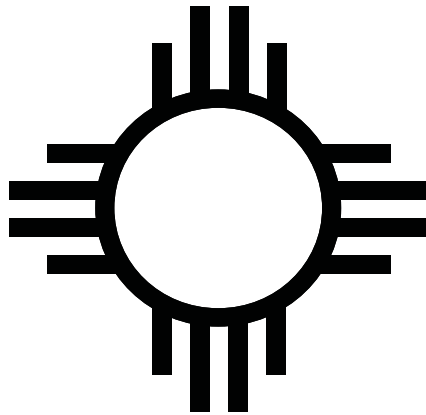
NEW MEXICO REGISTER



Volume XXI
Issue Number 10
May 28, 2010

New Mexico Register

Volume XXI, Issue Number 10
May 28, 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

COPYRIGHT © 2010
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XXI, Number 10

May 28, 2010

Table of Contents

Notices of Rulemaking and Proposed Rules

| | |
|---|-----|
| Albuquerque-Bernalillo County Air Quality Control Board | |
| Notice of Hearing | 415 |
| Energy, Minerals and Natural Resources Department | |
| Notice of Rulemaking | 416 |
| General Services Department | |
| Risk Management Division | |
| Risk Management Division Public Meeting and Rulemaking Notice | 416 |
| Higher Education Department | |
| Notice of Proposed Rulemaking | 417 |
| Human Services Department | |
| Medical Assistance Division | |
| Notice of Public Hearing | 417 |
| Psychologist Examiners, Board of | |
| Public Rule Hearing and Regular Board Meeting Notice | 418 |
| Public Education Department | |
| Notice of Public Hearing | 419 |
| Public Records, Commission of | |
| Notice of Regular Meeting and Notice of Rulemaking | 419 |
| Public Regulation Commission | |
| Notice of Proposed Rulemaking | 420 |
| Notice of Hearing and Procedural Order to Consider Adoption of the Property and Casualty Actuarial Opinion Rule | 421 |
| Public School Capital Outlay Council | |
| Notice of Proposed Rulemaking and Public Hearing | 422 |
| Real Estate Appraisers Board | |
| Legal Notice; Public Rule Hearing and Regular Board Meeting | 422 |
| Regulation and Licensing Department | |
| Construction Industries Division | |
| Notice of Public Hearing | 423 |
| Water Quality Control Commission | |
| Notice of Public Hearing to Consider Proposed Amendments to the Water Quality Control Commission Adjudicatory Regulations, 20.1.3 NMAC | 423 |
| Notice of Public Hearing to Consider Nomination of Perennial Waters in Forest Service Wilderness Areas as Outstanding National Resource Waters | 424 |
| Workforce Solutions, Department of | |
| Notice of Rulemaking and Public Hearing | 425 |

Adopted Rules

Effective Date and Validity of Rule Filings

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

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

Children, Youth and Families Department

| | | |
|---------------------------|---|--|
| Juvenile Justice Division | | |
| 8.14.1 NMAC | R | Juvenile Justice: General Provisions |
| 8.14.5 NMAC | R | Facility Operations |
| 8.14.1 NMAC | N | Juvenile Justice: General Provisions |
| 8.14.5 NMAC | N | Safety and Emergency Operations |
| 8.14.16 NMAC | N | Human Resources and Training Plan |

| | | | |
|--|-----|--|-----|
| 8.14.17 NMAC | N | Information Management | 433 |
| 8.14.18 NMAC | N | Physical Plant Management | 434 |
| 8.14.19 NMAC | N | Fiscal Management and Inventory Control | 435 |
| 8.14.20 NMAC | N | Client Rights and Services | 437 |
| 8.14.21 NMAC | N | Classification and Programs | 438 |
| 8.14.22 NMAC | N | Sealing Client Records | 440 |
| 8.14.23 NMAC | N | Confidentiality of Client Records | 442 |
| Game and Fish, Department of | | | |
| 18.15.3 NMAC | R | Off-Highway Motor Vehicle Safety Standards | 443 |
| 18.15.3 NMAC | N | Off-Highway Motor Vehicle Safety Standards | 443 |
| Human Services Department | | | |
| Medical Assistance Division | | | |
| 8.200.430 NMAC | A | Medicaid Eligibility - General Recipient Policies: Recipient Rights and Responsibilities | 446 |
| 8.262.400 NMAC | A | State Coverage Insurance (SCI) (Category 062): Recipient Policies | 448 |
| 8.262.500 NMAC | A | State Coverage Insurance (SCI) (Category 062): Income and Resource Standards | 450 |
| 8.262.600 NMAC | A | State Coverage Insurance (SCI) (Category 062): Benefit Description | 450 |
| 8.306.1 NMAC | A | State Coverage Insurance (SCI): General Provisions | 451 |
| 8.306.2 NMAC | A | Member Education | 455 |
| 8.306.3 NMAC | A | Contract Management | 455 |
| 8.306.4 NMAC | A | Eligibility | 455 |
| 8.306.5 NMAC | A | Enrollment | 455 |
| 8.306.6 NMAC | A | Provider Networks | 457 |
| 8.306.7 NMAC | A | Benefit Package | 457 |
| 8.306.8 NMAC | A | Quality Management | 461 |
| 8.306.9 NMAC | A | Coordination of Benefits | 462 |
| 8.306.10 NMAC | A | Encounters | 462 |
| 8.306.11 NMAC | A | Reimbursement | 462 |
| 8.306.12 NMAC | A | Member Grievance Resolution | 462 |
| 8.306.13 NMAC | A | Fraud and Abuse | 463 |
| 8.306.14 NMAC | A | Reporting Requirements | 463 |
| 8.306.15 NMAC | A | Services for SCI Members with Special Health Care Needs | 463 |
| 8.306.16 NMAC | A | Member Transition of Care | 463 |
| Juvenile Public Safety Advisory Board | | | |
| 22.510.100 NMAC | A | Juvenile Public Safety Advisory Board | 463 |
| Public Employees Retirement Association | | | |
| 2.80.600 NMAC | A/E | Service Credit and Purchase of Service Credit | 465 |
| Public Safety, Department of | | | |
| Training and Recruiting Division - Law Enforcement Academy | | | |
| 10.29.1 NMAC | A | Law Enforcement Academy: General Provisions | 466 |
| Regulation and Licensing Department | | | |
| Financial Institutions Division | | | |
| 12.15.8 NMAC | R | Home Loan Protection Act - Approved Third Party, NonProfit Counselors | 466 |
| 12.15.3 NMAC | A | Home Loan Protection Act - General Provisions | 466 |
| 12.15.4 NMAC | A | Home Loan Protection Act - High Cost Loans: Repayment Ability | 467 |
| 12.19.1 NMAC | A | Mortgage Lending: General Provisions | 468 |
| 12.19.2 NMAC | A | Mortgage Loan Originator Requirements | 468 |
| 12.19.8 NMAC | A | Mortgage Loan Company Requirements | 469 |
| Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Board | | | |
| 16.26.2 NMAC | A | Licensure Requirements | 471 |
| 16.26.4 NMAC | A | Annual Renewal of Licenses | 473 |
| 16.26.6 NMAC | A | Fees | 474 |
| 16.26.9 NMAC | A | Code of Ethics | 475 |
| Water Trust Board | | | |
| 19.25.10 NMAC | A | Review and Eligibility of Proposed Water Projects | 477 |

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 available free at <http://www.nmcpr.state.nm.us/nmregister>

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

ALBUQUERQUE- BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF HEARING

On July 14, 2010, at 5:30 PM, the Albuquerque-Bernalillo County Air Quality Control Board (Air Board) will hold a public hearing in the Vincent E. Griego Chambers located in the basement level of the Albuquerque-Bernalillo County Government Center, 400 Marquette Avenue NW, Albuquerque, NM. The hearing will address:

Proposal to adopt amendments to 20.11.60 NMAC, *Permitting in Nonattainment Areas*; 20.11.61 NMAC, *Prevention of Significant Deterioration*; and the *State Implementation Plan for Air Quality, to Address Infrastructure Requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act (CAA) to Implement the 1997 and 2006 PM_{2.5} NAAQS and the 1997 and 2008 Ozone NAAQS* (otherwise known as the "Infrastructure SIP"); and to submit said amendments to EPA as revisions to the SIP, for the following reasons:

Sections 110(a)(1) and (2) of the CAA, 42 U.S.C. § 7410(a)(1) and (2) hereafter referred to as the "Infrastructure SIP" requirements, obligates states to submit an implementation plan to the United States Environmental Protection Agency (EPA) Administrator that demonstrates their ability and authority to implement, maintain, and enforce each National Ambient Air Quality Standard (NAAQS). Section 110(a)(1) of the CAA addresses the timing requirement for the submissions of any "Infrastructure SIP" revisions while Section 110(a)(2) of the CAA lists the required elements that comprise the Infrastructure SIP.

These elements include: enforceable emission limitations and other control measures; air quality monitoring, compilation, data analysis, and reporting; enforcement and stationary source permitting; interstate transport; resources, conflict of interest, and emergency backstop; stationary source emissions monitoring and reporting; emergency powers and contingency plans; SIP revision for revised air quality standards or new attainment methods; SIP revisions for new nonattainment areas; consultation and public notification; air quality modeling and reporting; major stationary source permitting

fees; and consultation with local entities.

On August 15, 2006, the EPA issued guidance on what states should submit in order to comply with Section 110(a)(2)(D)(i) of the CAA. Subsequently, on October 2, 2007, the EPA issued guidance on what states should submit in order to comply with the remaining non-transport-related requirements of Section 110(a)(2) for both the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS.

The Air Quality Division acting as agent for the Air Board utilized both of these guidance documents to comply with the "Infrastructure SIP" requirements for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS in the following three ways:

(1). On September 12, 2007, the Air Board adopted an Interstate Transport SIP to comply with the requirements of §110(a)(2)(D)(i). The Air Quality Division submitted this SIP to EPA on October 24, 2007.

(2). On December 11, 2007, the Director of the Environmental Health Department submitted a "certification letter" to the Regional Administrator for EPA Region VI, certifying that Bernalillo County's infrastructure is adequate to enforce the "new" 1997 8-hour ozone NAAQS. However, on March 27, 2008, EPA published the "Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS" [FR Vol. 73, No. 60, 16205-16211]. Their finding for New Mexico, including Bernalillo County, was that:

"New Mexico: As required by Section 110(a)(2)(C) and (J), the State of New Mexico has failed to submit a SIP addressing changes to the Part C PSD permit program required by the November 29, 2005 [70 FR 71612, page 71699] final rule that made NO_x a precursor for ozone in the Part C regulations at 40 CFR 51.166 and in 40 CFR 52.21."

Therefore, the Air Board's *Prevention of Significant Deterioration* rule, 20.11.61 NMAC must be amended to correct this deficiency.

(3). As of 2004, states (including New Mexico and Bernalillo County) still had not submitted complete SIPs to satisfy all of the Section 110(a)(2) requirements for the 1997 PM_{2.5} NAAQS (as well as for the aforementioned 8-hour ozone NAAQS). On March 4, 2004, Earth Justice submitted a notice of intent to sue, related to EPA's failure to issue 'findings of failure to submit'

related to these requirements. Consequently, EPA entered into a Consent Decree with Earth Justice which required EPA, among other things, to sign a notice for publication in the Federal Register no later than October 5, 2008, announcing EPA's determinations pursuant to Section 110(k)(1)(B) as to whether each state has made complete submissions to meet the requirements of Section 110(a)(2) for the 1997 PM_{2.5} NAAQS.

On April 7, 2008, the Governor of New Mexico, on behalf of the Air Board, submitted an "Infrastructure SIP" to EPA, which addressed all the non-transport-related elements of Section 110(a)(2) with respect to the PM_{2.5} NAAQS.

Through these efforts, the Air Quality Division determined that it had the ability to implement the "Infrastructure SIP" requirements outlined in the EPA's guidance documents with respect to both the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS. Furthermore, these actions by the Air Quality Division, acting as agent for the Air Board, satisfied the timing requirement under the Consent Decree for the Section 110(a)(2) elements for the 1997 8-hour ozone and 1997 PM_{2.5} NAAQS.

Then on October 22, 2008, the EPA published its "Completeness Findings for Section 110(a) State Implementation Plans Pertaining to the Fine Particulate Matter (PM_{2.5}) NAAQS", [Vol. 73, No. 205, 62902-62906]. Their finding was as follows:

"The following states have been determined by EPA to have made complete SIP submissions that address all of the Section 110(a)(2) requirements as of the signature date of this notice: Region VI: Arkansas, Louisiana, New Mexico, Texas."

Thus, EPA is satisfied with Air Quality Division's basic infrastructure for enforcement of the PM_{2.5} NAAQS. However, in reviewing the Code of Federal Regulations, the Air Quality Division discovered that there were updates to the federal rule language that had not yet been incorporated into the Air Board rules entitled *Permitting in Nonattainment Areas*, 20.11.60 NMAC, and *Prevention of Significant Deterioration*, 20.11.61 NMAC. The amendments that are proposed to bring these rules into alignment with the CFR, are shown in the Public Review Drafts of these rules.

The proposed Public Review Drafts for the "Albuquerque-Bernalillo County Air Quality Control Board, State

Implementation Plan for Air Quality (SIP), to Address Infrastructure Requirements of Section 110(a)(2)(A)-(M) of the Clean Air Act to Implement the 1997 and 2006 PM_{2.5} NAAQS and the 1997 and 2008 Ozone NAAQS"; Permitting in Nonattainment Areas, 20.11.60 NMAC; and Prevention of Significant Deterioration, 20.11.61 NMAC are posted at <http://www.cabq.gov/airquality/aqcb/public-review-drafts>

Following the hearing, the Air Board will hold its regular monthly meeting during which the Air Board is expected to consider adopting the aforementioned proposals. Meetings of the Air Board are open to the public and all interested persons are encouraged to participate. All persons who wish to testify regarding the subject of the hearing may do so at the hearing and will be given a reasonable opportunity to submit relevant evidence, data, views, and arguments, orally or in writing, to introduce exhibits and to examine witnesses in accordance with the Joint Air Quality Control Board Ordinances, Section 9-5-1-6 ROA 1994 and Bernalillo County Ordinance 94-5, Section 6, and 20.11.82 NMAC, Rulemaking Procedures -- Air Quality Control Board.

Anyone intending to present technical testimony at this hearing is required by 20.11.82.20 NMAC to submit a written Notice Of Intent to testify (NOI) before 5:00pm on June 29, 2010, to: Attn: Hearing Clerk, Ms. Janice Wright, Albuquerque Environmental Health Department, P.O. Box 1293, Albuquerque, NM 87103, or, you may deliver your NOI to the Environmental Health Department, Suite 3023, 3rd Floor, 400 Marquette Avenue NW. The NOI shall: 1. identify the person for whom the witness or witnesses will testify; 2. identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background; 3. summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; 4. include the text of any recommended modifications to the proposed regulatory change; and 5. list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules.

In addition, written comments to be incorporated into the public record for this hearing should be received at the above P.O. Box, or Environmental Health Department office, before 5:00 pm on July 7, 2010. Comments shall include the name and address of the individual or organization submitting the statement. Written comments may also be submitted electronically to

jcwright@cabq.gov and shall include the required name and address information. Interested persons may obtain a copy of the proposed regulation at the Environmental Health Department office, or by contacting Ms. Janice Wright electronically at jcwright@cabq.gov or by phone (505) 768-2601, or by downloading a copy from the City of Albuquerque Air Quality Division website <http://www.cabq.gov/airquality/aqcb/public-review-drafts>.

NOTICE FOR PERSON WITH DISABILITIES: If you have a disability and/or require special assistance please call (505) 768-2600 [Voice] and special assistance will be made available to you to review any public meeting documents, including agendas and minutes. TTY users call the New Mexico Relay at 1-800-659-8331 and special assistance will be made available to you to review any public meeting documents, including agendas and minutes

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

NOTICE OF RULE MAKING

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT SANTA FE, NEW MEXICO Natural Heritage Conservation Act implementation

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD) hereby gives notice that they will conduct two public hearings concerning adoption of a new rule, 19.1.3 NMAC, to implement the Natural Heritage Conservation Act, including application and selection procedures for conservation projects that may receive grants from the Natural Heritage Conservation Fund. This rule will have statewide application.

The hearings will be (1) during 3:30-6:30 PM on Monday, June 21, 2010 in Porter Hall (First Floor), Wendell Chino Building, 1220 South St. Francis Drive, Santa Fe, New Mexico (parking in lot adjacent to building), and (2) during 3:30-6:30 PM on Wednesday, June 23, 2010 in the conference room at New Mexico Department of Agriculture building, 3190 S. Espina, Las Cruces, New Mexico (parking in free lot at corner of Knox and Gregg streets). Copies of the text of the proposed rule are available from Bruce Thompson at 505-476-3213 or from the Energy, Minerals and Natural Resources Internet web site at <http://www.emnrd>.

state.nm.us.

Written comments and oral comments will be accepted at the public hearings on June 21 and June 23 and written comments will be accepted until June 28, 2010 at 5:00PM by mail or e-mail. Comments are most helpful when they include specific suggested additions or deletions and where they apply in the proposed rule. Please mail written comments to Bruce Thompson, EMNRD, 1220 S. St. Francis Drive, Santa Fe, NM 87505 or submit them by e-mail to bruce.thompson@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 Bruce Thompson at 505-476-3213 at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Bruce Thompson at 505-476-3213, through Relay New Mexico at 1-800-489-8536 Voice/ TTY, if a summary or other type of accessible format is needed.

NEW MEXICO GENERAL SERVICES DEPARTMENT RISK MANAGEMENT DIVISION

RISK MANAGEMENT DIVISION PUBLIC MEETING AND RULE MAKING NOTICE

On **Monday June 28, 2010**, beginning at **2 p.m.** at the Joseph Montoya Building, 1100 St. Francis Drive, First Floor Bid Room, Santa Fe, NM 87502-0110, the Risk Management Division, General Services Department, will conduct a Public Meeting to hear and consider comments on the following proposed rule:

TITLE I G E N E R A L GOVERNMENT ADMINISTRATION CHAPTER 6 R I S K MANAGEMENT PART 6 D E F I N I N G TORT CLAIMS COVERAGE FOR COMMUNITY LAND GRANTS AND EXCLUDING COVERAGE FOR BUSINESS ENTERPRISE ACTIVITIES

The proposed rule is being promulgated pursuant to a newly-enacted statutory provision, effective July 1, 2010: NMSA 1978 Section 41-4-30 (2010). The statute directs the Risk Management Division to determine activities of community land grants that are business enterprises, and are therefore excluded from tort claims coverage provided to community land grants. The text of the newly-enacted statute provides:

Notwithstanding the provisions of Paragraph (1) of Subsection A of Section 43-4-25 NMSA 1978 to the contrary, a community land grant governed as a political subdivision of the state upon application to the risk management division of the general services department shall be authorized to purchase coverage for any risk for which immunity has been waived under the Torts Claims Act through the public liability fund, exclusive of coverage of an activity conducted by the community land grant that is determined by the director of the risk management division pursuant to division rules to be a business enterprise.

A copy of the proposed rule can be obtained from Al Duran, Risk Management Division, General Services Department, P.O. Box 6850, 1100 St. Francis Drive, First Floor Bid Room, Santa Fe, NM 87502-0110. Mr. Duran can be contacted at 505-827-0460 (phone) or 505-827-2108 (facsimile).

Written comments will be accepted upon receipt any time prior to the beginning of the Public Hearing on Monday June 28, 2010 at 2 p.m. Written comments may be delivered, mailed, or faxed to Mr. Duran.

If you are an individual with a disability who is in need of special assistance or reasonable accommodations to attend or participate in the Public Hearing, please contact Mr. Duran no later than June 21, 2010 with your request.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

NOTICE OF PROPOSED RULEMAKING

The New Mexico Higher Education Department hereby gives notice that the Department will conduct a public hearing on Monday, June 14, 2010 from 1:30-2:30 p.m. in Santa Fe at the Higher Education Department, 2048 Galisteo Street, Building B. The purpose of the public hearing will be to obtain input on the following rule:

| Rule Number | Rule Name | Proposed Action |
|-------------|---|---|
| 5.3.13 NMAC | ALLOCATION AND DISTRIBUTION OF THE ADULT BASIC EDUCATION FUND ACT | Instructional Material Allocation and Performance Based Funding Additions |

Copies of the proposed rule changes may be obtained from the Department. Written comments and questions concerning the rules identified with (# 5.3.13) should be submitted to Pam Etre-Perez, State Director of Adult Basic Education, 2048 Galisteo Street, Santa Fe, NM 87505, by facsimile at (505) 476-8453, or via electronic mail at: pam.etre-perez@state.nm.us. Comments will be accepted until 5 p.m. on June 11, 2010; however, submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Department at (505) 476-8400 at least one week prior to the meeting, or as soon as possible.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 am, on June 29, 2010, in the ASD conference room, Plaza San Miguel, 729 St. Michael's Drive, Santa Fe. The subject of the hearing will be Hospital Services, Out-of-State and Border Area Providers, and Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals.

The Human Services Department, Medical Assistance Division, is proposing to clarify regulatory language and to assure accuracy of existing rules. Detailed below are substantive changes to the rules.

Each of the proposed rules contains provider reimbursement changes as follows:

* For hospital providers, the

proposed reimbursement changes are: (1) the rate a provider agrees to be paid by a managed care organization (MCO) when an agreement cannot otherwise be reached will be reduced from 100% of the fee for service rate to 90% of the fee for service rate; (2) the implementation of an outpatient prospective payment system reimbursement methodology will be implemented on August 1, 2010; (3) pursuant to federal requirements for drug items, hospitals cannot bill nor be paid more than the acquisition of an item purchased at federal 340B prices; (4) the allowed \$2.00 maximum payment for oral medications dispensed in an outpatient setting will no longer be allowed as MAD will follow Medicare policy; and (5) payment limitations may apply to emergency room services that are not medically necessary.

* For out of state and border area providers, the proposed reimbursement changes are: (1) the rate a provider agrees to be paid by a managed care organization (MCO) when an agreement cannot otherwise be reached will be 90% of the fee for service

rate; and (2) placement in an out of state hospital may be restricted to the closest or otherwise most economically prudent choice of provider capable of rendering the service.

* For inpatient psychiatric care provided by free standing psychiatric hospital providers, the proposed reimbursement changes are: (1) the rate a provider agrees to be paid by a managed care organization (MCO) when an agreement cannot otherwise be reached will be 90% of the fee for service rate; and (2) reimbursement rates for free standing psychiatric hospitals which are not cost settled may be limited to rates established by MAD after considering cost to charge ratios and other reimbursement and cost data.

Changes in all three rules:

* Updating the mission statement to the current language.

* Updating the process for obtaining billing instructions and the provider's responsibility to become informed of rules.

* Adding wording stating that

payment is made by electronic funds transfer (EFT).

* Adding clarification to providers on their responsibilities and obligations under federal and state laws, regulations, executive orders as stated in the MAD Provider Participation Agreement and any MAD provider rules, appendices, program directions and billing instructions.

* Adding additional language directing providers to follow a coordinated services contractor's instructions for billing.

8.311.2 NMAC *Hospital Services*

* Subsection C, Paragraph (1) of 8.311.2.11NMAC - A change was made amending the accepted applicable reimbursement rate, the rate a provider agrees to be paid by a managed care organization when an agreement cannot otherwise be reached from 100% to 90%.

* Subsection D, Paragraph (1) of 8.311.2.15 NMAC -Additional language was added directing hospitals that purchase drug items at 340B prices may not bill for more than their 340B cost.

* Subsection D, Paragraphs (2 and (4) of 8.311.2.15 NMAC have been added to support outpatient prospective payment system (OPPS) implementation efforts by the Department, including eliminating the allowed \$2.00 maximum payment for oral medications dispensed in an outpatient setting.

* Subsections A, B, D and E of 8.311.2.16 NMAC have been added or changed to provide direction to hospitals on what MAD considers covered emergency services and provides clarity concerning MAD's retrospective review, and clarifying payment limitations that may apply to emergency room services that are not medically necessary.

8.302.4 NMAC *Out of State and Border Area Providers*

* Subsection C of 8.302.4.11 NMAC - Additional language was added stating the rate a provider agrees to be paid by a managed care organization (MCO) when an agreement cannot otherwise be reached will be 90% of the fee for service rate.

* Subsections C and F of 8.302.4.12 NMAC-Additional language was added to provide instruction and direction on how out of state adopted children may access MAD benefits and services. Additional language was also added to this section providing clarification that placement in an out of state hospital may be restricted to the closest or otherwise most economically prudent choice of provider capable of rendering the service.

8.321.2 NMAC *Inpatient Psychiatric Care in Freestanding Psychiatric Hospitals*

The current rule is in the old MAD rule format (MAD 742.1). This rule has been

reformatted to follow the current New Mexico Administrative Code requirements. Sections have been moved or combined in order to meet these requirements. Changes in the rule are underlined.

* 8.321.2.9 NMAC -Additional language was added to clarify the circumstances when a youth may continue inpatient services after his 21st birthday.

Subsection C of 8.321.2.11NMAC - Additional language was added stating the rate a provider agrees to be paid by a managed care organization (MCO) when an agreement cannot otherwise be reached will be 90% of the fee for service rate.

* 8.321.2.12 NMAC - New language was added informing hospitals that their reimbursement includes payment for a number of itemized services.

* 8.321.2.14 NMAC and 8.321.16 NMAC -A number of changes were added to meet the Code of Federal Register (CFR) requirements that became effective after the current rule was adopted. Language was also updated to meet current behavioral health terminology and support the direction of the State Behavioral Health Purchasing Collaborative's efforts to assist children in receiving the most appropriate level of care in their home and community before moving to a higher level of care and to ensure that the care provided at this level supports a child's re-entry back to his home and community.

* 8.321.2.17 NMAC -New language was added specifically addressing issues of percent of billed charges at a fee schedule rate, payment levels made by other payers, and negotiated rate allowed when a hospital provides unique services to a MAD recipient.

* Subsections A and F of 8.302.4.12 NMAC - Additional language was added to align current federal regulations that allow an expansion of how MAD determines when a provider is either out-of-state or in a border area. Additional language was also added detailing the conditions when a recipient may utilize an out-of-state provider as a border area provider for routine or emergency care.

Interested persons may submit written comments no later than 5:00 p.m., June 29, 2010, to Kathryn Falls, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register are available for review on our Website at www.hsd.state.nm.us/mad/register/2010 or by sending a self-addressed stamped envelope to Medical Assistance Division, Program Oversight & Support Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO BOARD OF PSYCHOLOGIST EXAMINERS

NEW MEXICO PSYCHOLOGIST EXAMINERS BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING NOTICE

Notice is hereby given that the New Mexico Psychologist Examiners Board will convene a public rule hearing at 9:00 a.m. on Friday, July 9, 2010. The hearing will be held at the Toney Anaya Bldg., 2nd Floor located at 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider for adoption proposed amendments to the following Board Regulations in 16.23 NMAC:

- Part 1 General Provisions
- Part 2 Code of Conduct
- Part 3 Non Licensed Psychologist/ Applicant with an Independent Mental Health License
- Part 4 Educational requirements for Psychologists
- Part 5 Application Procedures and Requirements for Licensure as a Psychologist
- Part 6 Pre-Doctoral and Post-Doctoral Supervised Experience
- Part 7 Examination Requirements
- Part 8 License Expiration and Renewal
- Part 9 Continuing Professional Education Requirements
- Part 10 Inactive Status and Reinstatement
- Part 11 Complaint Procedures and Adjudicatory Proceedings
- Part 12 Educational Requirements and Conditions of Practice for Psychologist Associates
- Part 13 Fees

Persons desiring to present their views on the proposed rules may write to

request draft copies from the Board office at 2550 Cerrillos Road, Santa Fe, New Mexico 87505; or call (505) 476-4604 or 476-4960; or access them in the "News" link on the Board's Website at www.rld.state.nm.us/b&c/rcb. A draft of the proposed changes will be available thirty days prior to the hearing. All written comments mailed to the Board office or e-mailed to liz.montoya@state.nm.us or must be submitted no later than Friday, June 25, 2010, in order for the Board members to receive the comments in their packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need ten (10) copies of any comments or proposed changes for distribution to the Board and staff at the hearing.

A regular business meeting will follow the rule hearing during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4604 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The New Mexico Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on July 9, 2010, from 3:00pm to 4:00pm. The purpose of the public hearing will be to obtain input on the following rule:

| Rule Number | Rule Name | Proposed Action |
|-------------|-------------|-----------------|
| 6.30.7 NMAC | Dual Credit | Amend |

Interested individuals may testify at the public hearing or submit written comments to Marcia Knight, New Mexico Public Education Department 300 Don Gaspar, Santa Fe, New Mexico 87501 or (marcia.knight@state.nm.us) (telefax (505) 827-1820).

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

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us>) or obtained from Marcia Knight at the address listed above, or by phone (505) 827-1802. 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 Marcia Knight as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The NM Commission of Public Records has scheduled a regular meeting for Tuesday, June 15, 2010, at 9:30 A.M. The meeting will be held at the NM State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, N.M. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902 by June 7, 2010. Public documents, including the agenda and minutes, can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

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

Amendments

1.18.430 NMAC

ERRDS, Public Regulation Commission

Repeal

1.18.665 NMAC
Department of Health

ERRDS,

New-Replacement

1.18.665 NMAC
Department of Health

ERRDS,

[Notices continued on page 420]

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF)
 FUEL AND PURCHASED POWER) Case No. 07-00389-UT
 COST ADJUSTMENT CLAUSES)
 AND RELATED INFORMATION)

NOTICE OF PROPOSED RULEMAKING

NOTICE is hereby given that the New Mexico Public Regulation Commission (“NMPRC” or the “Commission”) is commencing a rulemaking proceeding for the purpose of addressing a proposed amendment to NMPRC Rule 17.9.550 NMAC governing fuel and purchased power cost adjustment clauses. The proposed rule amendment, which is attached hereto as Exhibit A, would be promulgated under authority granted to the Commission by the New Mexico Constitution, Article XI, Section 2 (1996), and by the Legislature pursuant to NMSA 1978 Sections 8-8-4 (B)(10) and 8-8-15. The proposed amendment was developed in a workshop proceeding initiated at the Commission’s own motion in the Notice of Inquiry issued in this matter, NMPRC Case Number 07-00389-UT. Whereupon, having reviewed the record and being duly advised,

THE COMMISSION FINDS AND CONCLUDES:

1. As reflected in Exhibit A, the Commission proposes to amend 17.9.550 NMAC by revising the rule as follows. There are some basic revisions of out-dated terminology, substituting the correct name of the present “New Mexico Public Regulation Commission” for the former “New Mexico Public Service Commission” in the existing rule. The revisions also include: A) four years instead of two years for continuation filings; B) electronic filing of the month’s fuel factor; C) 5 days notice of the factor instead of 10 days; D) recognition of other methods (rolling average and fixed factors for example) other than a monthly method; E) provision for notice of unplanned outages; F) set procedure for the conducting of prudence audits; and G) a clause requiring that costs of long term purchase contracts can only be flowed through if consistent with all commission orders and rules regarding these contracts.

2. Any person wishing to comment on the proposed amendments may do so by submitting written comments no later than June 4, 2010. Any person wishing to respond to comments may do so by submitting written response comments no later than June 11, 2010. Comments suggesting modifications to the rule amendment as proposed shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the draft rule shall be provided in legislative format. A copy of the proposed rule may be obtained at the address given below.

3. The proposed amendment was developed in a workshop proceeding initiated at the Commission’s own motion in the Notice of Inquiry issued in this matter, NMPRC Case Number 07-00389-UT. Recommendations from the workshop were presented by Hearing Examiner William J. Herrmann to the Commission in open meeting November 5, 2009, along with a draft of the proposed revisions, which is the attached Exhibit A.

4. Proposed Rule 17.9.550.13B provides as follows:

B. An investor-owned utility shall itemize the *total fixed cost expenses* included in each month’s FPPCAC report that were incurred under purchased power contracts with a minimum term of fifteen days and entered into by the utility to replace normally available or scheduled power and energy from the utility’s generating resources that operate at annual capacity factors of 40 percent or more and that were unavailable due to an unplanned outage.

The Commission requests that interested parties include in their comments their views on whether and how the phrase “total fixed cost expenses” should be defined for the purposes of the proposed amended rule, the purpose of requiring utilities to include that information in the FPPCAC Report, and whether that requirement should be retained or modified in the rule amendments to be adopted by the Commission.

5. All pleadings, including comments, shall bear the caption and case number contained at the top of this notice. Comments on the proposed amendment shall be sent to:

Docketing Office
 NM Public Regulation Commission
 PERA Bldg. Room 406
 1120 Paseo de Peralta 87501
 PO Box 1269
 Santa Fe, New Mexico 87504-1269
 Telephone: (505) 827-4526

6. A public hearing will begin at 11:00 on June 17, 2010, or after the Regular Open Meeting of the Commission whichever is later at the offices of the NMPRC, PERA Bldg, 4th Fl, 1120 Paseo de Peralta, Santa Fe, New Mexico to receive oral comment and to clarify or supplement the written comments. No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.

7. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

8. Any person with a disability requiring special assistance in order to participate in a hearing should contact Cecilia Rios at 827-4501 at least 48 hours prior to the commencement of the hearing.

9. 1.2.3.7(B) NMAC (“Ex Parte Communications”) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only

the latter as “ex parte communications”. In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be July 16, 2010, or the date a Final Order is issued in this case, whichever is earlier. The setting of that record closure date will permit Commissioners and Commission counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission’s proposed rules or responses to any bench request orders. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

10. Copies of any Final Order adopting the proposed amendment and proposed rule will be sent, along with copies of the particular rule, to the parties on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The proposed rule, attached to this Notice of Proposed Rulemaking as Exhibit A, is proposed for adoption as a permanent rule as provided by this Notice.

B. Initial comments on the proposed rule must be filed no later than June 4, 2010, and response comments must be filed no later than June 11, 2010.

C. A public comment hearing shall be held as provided in this Notice of Proposed Rulemaking.

D. A copy of this Notice, including Exhibit A, shall be emailed to all persons on the attached Certificate of Service if their email addresses are known, and if not known, mailed to such persons via regular mail. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission’s web site.

E. This Notice, excluding Exhibit A, shall be published in two newspapers of general circulation in the State and in the *New Mexico Register*.

F. The record in this case, for the purposes of 1.2.3.7(B) NMAC shall be closed at 5:00 p.m. on July 16, 2010, or the date a Final Order is issued in this case, whichever is earlier.

G. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 29th day of April, 2010.

NEW MEXICO PUBLIC REGULATION COMMISSION

DAVID W. KING, CHAIRMAN

JEROME D. BLOCK, VICE CHAIRMAN

JASON A. MARKS, COMMISSIONER

CAROL K. SLOAN, COMMISSIONER

SANDY JONES, COMMISSIONER

NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE

IN THE MATTER OF:

PROPERTY AND CASUALTY
ACTUARIAL OPINION RULE

Docket No.
10-00140-IN

NOTICE OF HEARING AND PROCEDURAL ORDER TO CONSIDER ADOPTION OF THE PROPERTY AND CASUALTY ACTUARIAL OPINION RULE

THIS MATTER comes before the New Mexico Superintendent of Insurance (“Superintendent”) upon the Superintendent’s own motion and pursuant to the statutory authority contained in NMSA 1978, Section 59A-2-9(A) (1997), which provides that the Superintendent may make reasonable rules and regulations necessary for or as an aid to administration or effectuation of any provision of the Insurance Code administered by the Superintendent, and from time to time withdraw, modify or amend any such rule or regulation, and the statutory authority contained in NMSA 1978, Section 59A-5-29(A), which provides that an authorized insurer’s Annual Statement be supplemented by additional information reasonably required by the Superintendent. The Superintendent, being fully advised in the premises, hereby issues the following notice and order:

1. A public hearing shall be held on **Wednesday, June 30, 2010 at 9:00 a.m.**, or immediately following any on-going, previously scheduled hearing conducted by the Hearing Officer, which ever comes later, and continuing thereafter as necessary in the Public Regulation Commission Board Room, Third Floor, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico.

2. The proceeding shall be informal within the meaning of NMSA 1978, Section 59A-4-18 (1984).

3. The staff for the New Mexico Public Regulation Commission’s Insurance Division (“Staff”) has prepared the rules contained in Appendix A for the purpose of adopting the Property and Casualty Actuarial Opinion Model Law of the National Association of Insurance Commissioners. The hearing shall be held for the purpose of considering the adoption of the rules contained in Appendix A.

4. All interested persons may testify at the hearing.

5. Written comments on Staff’s proposal as contained in Appendix A shall be filed in this docket on or before **Wednesday, June 23, 2010**. All written comments suggesting changes to Staff’s proposal shall state and discuss the particular reasons for the suggested changes and, where necessary or appropriate to effectuate the changes being suggested, shall include specific language for incorporation into the proposal. Comments and other materials to be filed shall be submitted in person or by mail to the docketing office, citing the above-referenced docket. The docketing office is located in Room 406, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, New Mexico and its mailing address is P.O. Box 1269, Santa Fe, New Mexico 87504-1269. An additional copy of all comments and other materials filed in this docket shall be delivered or mailed to Hearing Officer assigned

to this matter at the following address: Hearing Officer, Insurance Division, Room 431, P.E.R.A. Building, Corner of Paseo de Peralta and Old Santa Fe Trail, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

6. All submissions shall be deemed filed as of the date and time stamped by the docketing office.

7. Comments will be available for public inspection during regular business hours at the Public Regulation Commission's docketing office.

8. Staff shall arrange for distribution and publication of this notice pursuant to NMSA 1978, Section 59A-4-16, and other applicable law.

9. Any 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, should contact Mariano Romero, at (505) 827-4526, no later than **Friday, June 25, 2010**. Public documents, including the transcript, agenda or minutes, if any, can be provided in various accessible forms. Please contact Mariano Romero if a summary or other type of accessible form is needed.

10. Interested persons should contact the Docketing Office or Staff for confirmation of the hearing date, time, and place because hearings are rescheduled on occasion.

DONE AND ORDERED this ____ day of May, 2010.

Thomas Rushton
Acting Superintendent of Insurance

NEW MEXICO PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL

PUBLIC SCHOOL CAPITAL OUTLAY COUNCIL NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Public School Capital Outlay Council ("Council") is scheduled to consider the following rulemaking actions at its June 17, 2010 meeting beginning at 9:00 a.m. in Room 317 of the State Capitol, Santa Fe, New Mexico: 6.27.1 NMAC (GENERAL PROVISIONS) - Amend

rule; 6.27.2 NMAC (PUBLIC SCHOOL FACILITIES AUTHORITY) - Amend rule; 6.27.3 NMAC (APPLICATION AND GRANT ASSISTANCE PROCEDURES AND REQUIREMENTS RELATING TO PREVENTIVE MAINTENANCE PLANS) - Amend rule; 6.27.30 NMAC (STATEWIDE ADEQUACY STANDARDS) - Amend Rule.

There will be a public hearing regarding the proposed rules on June 3, 2010 at 1:00 p.m. at the University of New Mexico, Science and Technology Park Auditorium, Albuquerque, New Mexico. The proposed rules are posted on the Public School Facilities Authority's website at www.nmpsfa.org and have been disseminated to public school districts, charter schools, and other interested parties. Copies may also be obtained by contacting Lena Archuleta, Public School Facilities Authority, 2019 Galisteo, Suite B-1, Santa Fe, NM, 87505 ((505) 988-5989); larchuleta@nmpsfa.org). Written comments regarding the proposed rulemaking should be submitted to Ms. Archuleta at the addresses shown above. Comments may also be telefaxed to Ms. Archuleta at (505) 988-5933. Written comments must be submitted no later than 5:00 p.m. on June 3, 2010, however, submission of written comments as soon as possible is encouraged.

The Council will act on the proposed rules at a public meeting for which notice is given in accordance with the Council's Open Meetings Policy. The agenda will be available at least twenty-four hours prior to the meeting and may be obtained by contacting Ms. Archuleta. Notice of any changes regarding the date, time, and location of the Public School Capital Outlay Council meeting will be provided in accordance with the Council's open meetings policy. The agenda will also be electronically mailed to public school districts and charter schools.

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 Lena Archuleta at (505) 988-5989 by May 27, 2010. Public documents, including the agenda and minutes, can be provided in various accessible forms. Please contact Lena Archuleta if a summary or other type of accessible form is needed.

NEW MEXICO REAL ESTATE APPRAISERS BOARD

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Real Estate Appraisers Board will hold a Rule Hearing and regular board meeting on Thursday, July 1, 2010. Following the Rule Hearing the New Mexico Real Estate Appraisers Board will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Real Estate Appraisers Board will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the main conference room at 5200 Oakland NE, Albuquerque, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.62.1 NMAC: General Provisions; 16.62.2 NMAC: Application for Apprentice; 16.62.3 NMAC: Application for License; 16.62.4 NMAC: Application For Residential Certificate; 16.62.5 NMAC: Application for General Certificate; 16.62.6 NMAC: Examinations; 16.62.7 NMAC: Issuance/Renewal of Apprentice Registration/Licenses/Certificates; 16.62.8 NMAC: Educational Programs/Continuing Education; 16.62.12 NMAC: Fees; 16.62.17 NMAC: Unlicensed Practice/Penalties. Also, 16.65.1 NMAC General Provisions; 16.65.2 NMAC: Registration Requirements; 16.65.3 NMAC: Application For Registration; 16.65.4 NMAC: Discipline; 16.65.5 NMAC: Fees.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, (505)476-4860, or send an e-mail to Real.Estate.Appraisers.Board@State.nm.us after June 1, 2010. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than June 16, 2010. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

The Board may enter into Executive Session pursuant to § 10-15-1 of the Open Meetings Act, to discuss matters related to the

issuance, suspension, renewal or revocation of licenses.

The proposed rules will be posted to the website by June 1, 2010 and a copy of the agenda for the meeting will be available at least 24 hours prior to the meeting and can be obtained by contacting the Board Office at (505)476-4860

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4860 at least two weeks prior to the meeting or as soon as possible.

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

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**STATE OF NEW MEXICO
CONSTRUCTION INDUSTRIES
DIVISION
of the
Regulation and Licensing Department**

NOTICE OF PUBLIC HEARING

A Public Hearing on the proposed amendments to the 2009: International Commercial Building Code, International Residential Code, International Energy Conservation Code, New Mexico Earthen Building Materials Construction Code, New Mexico Non-Load Bearing Baled Straw Construction Building Code, Uniform Plumbing Code, Uniform Mechanical Code, and the 2008 National Electrical Code will be held the following dates, times and locations:

June 28, 2010, 10:00 am - 1:00pm:
FARMINGTON - McGee Park Convention Center, #41 Road 5568, Bloomfield Hwy

June 29, 2010, 9:00 am - 12:00 pm:
ROSWELL, NM - City Council Chambers, 421 N. Richardson

June 30, 2010, 10:00 am - 1:00 pm: **LAS CRUCES, NM** - CID Conference Room, 505 So. Main St., Suite 150

July 1, 2010, 9:00 am - 12:00 pm: **SANTA FE, NM** - CID Conference Room, 2550 Cerrillos Road, 3rd Floor, Santa Fe

July 1, 2010, 2:00 pm - 5:00 pm:
ALBUQUERQUE, NM - CID Conference

Room: 5200 Oakland Avenue, NE

Copies of the proposed rules are currently available on the Construction Industries Division's website: www.rld.state.nm.us/cid and at the CID office in Santa Fe.

You are invited to attend and express your opinion on these proposed rules changes. If you cannot attend the meeting, you may send your written comments to the Construction Industries Division, 2550 Cerrillos Road, P.O. Box 25101, Santa Fe, New Mexico 87504, Attention: Public Comments. FAX (505) 476-4685. All comments must be received no later than 5:00 p.m., July 1, 2010.

If you require special accommodations to attend the hearing, please notify the Division by phone, email or fax, of such needs no later than June 24, 2010. Telephone: 505-476-4700. Email: www.rld@state.nm.us/cid Fax No. 505-476-4685.

**NEW MEXICO WATER
QUALITY CONTROL
COMMISSION**

**NEW MEXICO WATER QUALITY
CONTROL COMMISSION
NOTICE OF PUBLIC HEARING
TO CONSIDER PROPOSED
AMENDMENTS TO THE WATER
QUALITY CONTROL COMMISSION
ADJUDICATORY REGULATIONS,
20.1.3 NMAC.**

The New Mexico Water Quality Control Commission ("Commission" or "WQCC") will hold a public hearing on July 13, 2010 at 9:00 a.m. and continuing thereafter as necessary in Room 317, State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, New Mexico. The hearing location may change prior to July 13, 2010 and those interested in attending should check the WQCC website: <http://www.nmenv.state.nm.us/WQCC/> prior to the hearing. The purpose of the hearing is to consider proposed amendments to 20.1.3 NMAC, the Water Quality Control Commission Adjudicatory Regulations. The New Mexico Environment Department is petitioning for the amendment of these regulations.

The proposed amendments relate to statutory changes that were made to NMSA 1978, § 74-6-5 relating to appeals of permitting actions. Additional changes to 20.1.3 NMAC are also being proposed to correct existing grammatical and style errors and to ensure consistency among the various adjudicatory proceedings before the Commission.

Please note formatting and minor technical changes in the regulations may occur. In addition, the Commission may make other amendments as necessary to accomplish the purpose of providing public health and safety in response to public comments submitted to the Commission and evidence presented at the hearing.

The proposed regulations may be reviewed during regular business hours at the office of the Water Quality Control Commission, Harold Runnels Building, 1190 St. Francis Drive, Room N-2153 Santa Fe, NM, 87505. Copies of the proposed regulations may be obtained by contacting Joyce Medina at (505) 827-2425 or by email at joyce.medina@state.nm.us. Please refer to Docket No. WQCC 10-02(R). Written comments regarding the new regulations may be addressed to Ms. Medina at the above address, and should reference Docket No. WQCC 10-02(R).

The hearing will be conducted in accordance with the Guidelines for Water Quality Control Commission Regulation Hearings, which can be found at <http://www.nmenv.state.nm.us/wqcc/WQCC1993Guidlines.pdf>.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Any person who wishes to submit a non-technical written statement for the record in lieu of oral testimony shall file such statement prior to the close of the hearing.

Persons wishing to present technical testimony must file with the Commission a written notice of intent to do so. The notice of intent shall:

- identify the person or entity for whom the witness(es) will testify;
- identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- attach the text of any recommended modifications to the proposed regulatory changes.

Notices of intent for the hearing must be received in the Office of the Water Quality Control Commission not later than 5:00 pm on July 2, 2010, and should reference the name of the regulation, the date of the hearing, and Docket No. WQCC 10-02(R). Notices of intent to present technical testimony should be submitted to:

Joyce Medina
Commission Administrator
NMED Boards and Commissions
Harold Runnels Building
1190 St. Francis Dr., Room N-2153
Santa Fe, NM 87502

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Judy Bentley at the Personnel Services Bureau by July 2, 2010. The Personnel Services Bureau can be reached at the New Mexico Environment Department, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, NM 87502, (505) 827-2844. TDD or TDY users may access this number via the New Mexico Relay Network (Albuquerque TDD users: (505) 275-7333; outside of Albuquerque: 1-800-659-1779).

The Commission may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Commission may convene a meeting after the hearing to consider action on the proposal.

NEW MEXICO WATER QUALITY CONTROL COMMISSION

NEW MEXICO WATER QUALITY CONTROL COMMISSION NOTICE OF PUBLIC HEARING TO CONSIDER NOMINATION OF PERENNIAL WATERS IN FOREST SERVICE WILDERNESS AREAS AS OUTSTANDING NATIONAL RESOURCE WATERS

The New Mexico Water Quality Control Commission (WQCC) will hold a public hearing on September 14, 2010 and continuing on subsequent days as necessary in Room 307 of the State Capitol Building, 490 Old Santa Fe Trail, Santa Fe, NM 87501 to consider proposed amendments to 20.6.4.7, -8, and -9 NMAC of the WQCC's Standards for Interstate and Intrastate Surface Waters. The WQCC will begin its regular monthly meeting at 9:00 am on September 14, 2010, and the public hearing will begin at the conclusion of its regular business.

The proposed amendments to 20.6.4.9

NMAC, submitted by the New Mexico Environment Department (NMED), the New Mexico Department of Game and Fish, and the New Mexico Energy, Minerals and Natural Resources Department, nominate all perennial waters within United States Forest Service Wilderness Areas as outstanding national resource waters (ONRWs). This notice also gives notice, pursuant to 20.6.4.9.A(6) NMAC, that the parties have amended their original proposal to exclude intermittent waters and tributaries to the waters nominated.

The proposed amendments to 20.6.4.7 and -8 NMAC, submitted by NMED, propose changes to the state's Antidegradation Policy and Implementation Plan governing temporary and short-term degradation to ONRWs and watershed restoration projects that have the potential to degrade any surface water of the state.

NMED also proposes to amend NMED's Antidegradation Implementation Procedures, which apply to permitted discharges to surface waters, and to amend NMED's Guidance for Nonpoint Source Discharges in Areas Designated as Outstanding National Resource Waters, which applies to nonpoint source discharges to surface waters.

All proposals to be considered by the WQCC are available at <http://www.nmenv.state.nm.us/swqb/ONRW/>.

The proposals may also be obtained electronically or reviewed in person by contacting:

Joyce Medina, WQCC Administrator
1190 S. St. Francis Dr., PO Box 5469
Santa Fe, NM 87502
Tel: (505) 827-2425
Fax: (505) 827-2836
E-mail: joyce.medina@state.nm.us

The hearing will be conducted in accordance with Section 74-6-6 of the Water Quality Act, the Guidelines for WQCC Regulation Hearings, and the Procedural Order and Scheduling Order issued by the WQCC Hearing Officer. These documents are available at: <http://www.nmenv.state.nm.us/WQCC/> or by contacting the WQCC Administrator.

Technical Testimony:

In order to present technical testimony at the hearing, a person must file a notice of intent to present technical testimony with the WQCC Administrator no later than August 13, 2010 at 5:00 pm. The notice shall:

1. Identify the person for whom the witness(es) will testify;
2. Identify each technical witness the person intends to present and state the

qualifications of that witness including a description of their educational and work background;

3. Attach the full direct testimony of each technical witness;
4. State the anticipated duration of the direct testimony of each technical witness;
5. Include the text of any recommended modifications to the proposed regulatory change and a statement of basis;
6. Identify and attach all exhibits to be offered by the person at the hearing in their direct case; and
7. Identify whether the person supports or opposes the nomination to be considered by the WQCC and the basis for the position.

The Hearing Officer shall enforce the above requirements through the exclusion of technical testimony, exhibits or recommended modifications, as appropriate.

Participation by the General Public:

Any member of the general public may present non-technical testimony and exhibits at the hearing. No prior notification is required. Persons desiring to present non-technical testimony may be heard at 1:00 pm each day that the hearing continues, at the end of each technical case, and at other times as the hearing officer allows. A member of the general public may submit a written non-technical statement for the record to the WQCC Administrator in lieu of oral testimony at any time prior to the hearing or at the hearing at any time prior to the close of the hearing.

Post-hearing Procedures

At the conclusion of the hearing, the WQCC may make a final decision or may provide information regarding post-hearing submittals and a timeframe for its final decision.

Assistance

If any person requires assistance, an interpreter or auxiliary aid to participate in this process, please contact Judy Bentley at least ten days prior to the hearing date at NMED, Personnel Service Bureau, Room N-4071, 1190 S. St. Francis Drive, PO Box 5469, Santa Fe, NM 87502, (505) 827-9872. TDY users may access Ms. Bentley's number through the New Mexico Relay Network at 1-800-659-8331.

**NEW MEXICO
DEPARTMENT OF
WORKFORCE SOLUTIONS**

NEW MEXICO
DEPARTMENT OF WORKFORCE
SOLUTIONS
NOTICE OF RULEMAKING
AND PUBLIC HEARING

The New Mexico Department of Workforce Solutions (DWS) will hold a public hearing from 10:00am to 11:00am on Tuesday June 15, 2010, at Aspen Plaza, at 1596 Pacheco Street, 2nd Floor Conference Room, Santa Fe, NM 87505, to discuss a proposed change to Title 11 of the New Mexico Administrative Code, Labor and Workers Compensation, Chapter 3, Employment Security, Part 300 Claims Administration. The definition of registration is being clarified to include an orientation. The orientation informs new Unemployment Insurance claimants ("claimants") of the services available to them through the New Mexico Workforce Connection. The change also clarifies that claimants' benefits may be temporarily withheld until completion of registration, in accordance with NMSA 51-1-5.

The hearing will be held before the general public. All interested parties may attend the hearing and present their views orally or submit written comments prior to the hearing. Please direct written comments, requests for copies of the proposed rule change, and requests for special accommodations at the hearing to: Shirley LaCourse, ARRA Reemployment Staff Manager, at 401 Broadway NE, Albuquerque, NM, 87103, or via email: shirley.lacourse@state.nm.us. Requests for special accommodation should be made no later than ten days before the hearing, and may also be made by phone at (505) 841-8719.

**End of Notices and Proposed
Rules Section**

This page intentionally left blank

Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

8.14.1 NMAC, General Provisions, filed 12/16/2005 is repealed and replaced by 8.14.1 NMAC, General Provisions, effective 6/1/2010.

8.14.5 NMAC, Facility Operations, filed 7/24/2008 is repealed and replaced by 8.14.5 NMAC, Safety and Emergency Operations, effective 6/1/2010.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 1 G E N E R A L PROVISIONS

8.14.1.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.1.1 NMAC - Rp, 8.14.1.1 NMAC, 6/1/2010]

8.14.1.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the CYFD.
[8.14.1.2 NMAC - Rp, 8.14.1.2 NMAC, 6/1/2010]

8.14.1.3 S T A T U T O R Y AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.1.3 NMAC - Rp, 8.14.1.3 NMAC, 6/1/2010]

8.14.1.4 D U R A T I O N : Permanent.
[8.14.1.4 NMAC - Rp, 8.14.1.4 NMAC, 6/1/2010]

8.14.1.5 EFFECTIVE DATE: June 1, 2010, unless a later date is cited at the end of a section.
[8.14.1.5 NMAC - Rp, 8.14.1.5 NMAC, 6/1/2010]

8.14.1.6 OBJECTIVE: To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision or in the custody of the department, including implementation of Cambiar New Mexico. This rule further

establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients.

[8.14.1.6 NMAC - Rp, 8.14.1.6 NMAC, 6/1/2010]

8.14.1.7 DEFINITIONS:

A. “Cambiar (Change) New Mexico” refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services’ staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old “correctional” model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. “Client” refers to a person who is committed to the custody of CYFD’s juvenile justice services or who is receiving services from juvenile justice services.

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

D. “Department” refers to the New Mexico children, youth and families department.

E. “Director” refers to the juvenile justice services director.

F. “Facility” refers to a facility operated by, or on behalf of CYFD’s juvenile justice services, or any other facility or location designated by the juvenile justice services’ director to house or provide care to clients committed to the custody of CYFD.

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

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

I. “Secretary” refers to the secretary of CYFD.

J. “Secure facility” refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility

designated a secure facility by the director of juvenile justice services.

K. “Staff” refers to employee(s) of CYFD.

L. “Superintendent” refers to the chief administrator at a JJS facility.

M. “Youth care specialist” refers to juvenile justice services security employees whose primary duties include working directly with clients.

[8.14.1.7 NMAC - N, 6/01/2010]

8.14.1.8 G E N E R A L PROVISIONS: Juvenile justice services maintains a body of policies and procedures that establishes its mission, goals, objectives, and standard operating practices.

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

8.14.1.9 MISSION: CYFD believes in the strengths and resiliency of families who are our partners and for whom we advocate to enhance their safety and well-being. CYFD respectfully serves and supports children and families and supervises youth in a responsive, community-based system of care that is client-centered, family-focused and culturally competent. CYFD partners with communities to strengthen families in New Mexico to be productive and self-sufficient. Juvenile justice services’ focus is on rehabilitation and regionalization, and on Cambiar New Mexico, which emphasizes rehabilitation and regionalization.

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

8.14.1.10 ORGANIZATION: Juvenile justice services maintains an organizational structure providing a clear picture of its roles and responsibilities to the public and the roles and responsibilities of its employees. Juvenile justice services also groups similar functions together, establishes lines of authority, maintains an effective span of control, and promotes two-way channels of communication.

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

8.14.1.11 N O N - DISCRIMINATION: All services and licenses are provided in accordance with federal and state constitutional, statutory and regulatory requirements. Except as otherwise stated, the department and any contract provided service and license shall be without regard to age, gender, race, religion, disability, marital status, or tribal affiliation in accordance with the law.

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

8.14.1.12 INTER AGENCY RELATIONSHIPS: Juvenile justice services works with, and when appropriate

shares information with, other service programs within CYFD and other state agencies to enhance the provision of services to clients.

[8.14.1.12 NMAC - Rp, 8.14.1.9 NMAC, 6/1/2010]

8.14.1.13 REGULATIONS, POLICIES AND PROCEDURES:

Juvenile justice services maintains a manual of policies and procedures directing its operations, invites public comment as required by law, and conducts annual reviews on the effectiveness of its policies and procedures.

[8.14.1.13 NMAC - Rp, 8.14.1.11 NMAC, 6/1/2010]

8.14.1.14 PUBLIC INFORMATION AND MEDIA ACCESS:

The department's director of communications or public information officer respond to inquiries from the media. Unless authorized by the director or public information officer, staff members do not communicate with the media as a representative of the department regarding CYFD matters.

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

8.14.1.15 POLITICAL ACTIVITIES:

Juvenile justice services guidelines for political activities is guided by CYFD's policy and procedure, State Personnel Act and state personnel board rules.

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

8.14.1.16 CRITICAL SELF ANALYSIS:

CYFD may conduct an internal review of any critical situation in which self-analysis is determined to be appropriate. Critical self-analysis is confidential and privileged and not for publication or release. Unauthorized disclosure of critical self analysis documentation and content is grounds for discipline, including termination.

[8.14.1.16 NMAC - Rp, 8.14.1.35 NMAC, 6/1/2010]

8.14.1.17 LEGAL COUNSEL:

CYFD's office of general counsel is available to review policies, procedures and practices to ensure they are consistent with federal and New Mexico state statutes, regulations and relevant court decisions. The office of general counsel is also available to assist juvenile justice services employees as needed in the performance of their duties.

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

8.14.1.18 CLEAN INDOOR AIR ACT:

Juvenile justice services buildings, offices and work areas comply with the Dee Johnson Clean Indoor Air Act. All employees, clients and visitors will be notified of any designated tobacco free or tobacco use zones.

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

8.14.1.19 CHILD ADVOCACY GROUPS:

Approved advocacy personnel have access to staff members, administrators, clients and client records. Facility superintendents are responsible for ensuring that staff who have contact with clients sign a copy of the department approved form called "acknowledgement of receipt and understanding" pertaining to advocacy groups and that these signed forms become a part of the of the employee's personnel file.

[8.14.1.19 NMAC - Rp, 8.14.1.45 NMAC, 6/1/2010]

8.14.1.20 PROCEDURES:

The juvenile justice services director will make appropriate internal procedures available to the public but reserves the right to add, delete or modify internal procedures without notice or comment in furtherance of the mission and goals of the department or service area.

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

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 5 SAFETY AND EMERGENCY OPERATIONS

8.14.5.1 ISSUING AGENCY:

Children, Youth and Families Department.

[8.14.5.1 NMAC - Rp, 8.14.5.1 NMAC, 6/1/2010]

8.14.5.2 SCOPE:

This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.

[8.14.5.2 NMAC - Rp, 8.14.5.2 NMAC, 6/1/2010]

8.14.5.3 STATUTORY AUTHORITY:

Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.

[8.14.5.3 NMAC - Rp, 8.14.5.3 NMAC, 6/1/2010]

8.14.5.4 DURATION:

Permanent.

[8.14.5.4 NMAC - Rp, 8.14.5.4 NMAC, 6/1/2010]

8.14.5.5 EFFECTIVE DATE:

June 1, 2010 unless a later date is cited at the end of a section.

[8.14.5.5 NMAC - Rp, 8.14.5.5 NMAC, 6/1/2010]

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

[8.14.5.6 NMAC - Rp, 8.14.5.6 NMAC, 6/1/2010]

8.14.5.7 DEFINITIONS:

A. "Cambiar (Change) New Mexico" is the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services' staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old "correctional" model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. "Client" refers to a person who is committed to the custody of the CYFD juvenile justice services or who is receiving services from juvenile justice services.

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

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

E. "Director" refers to the juvenile justice services director.

F. "Facility" refers to a facility operated by, or on behalf of the CYFD juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

G. "FACTS" (FAMILY AUTOMATED CLIENT TRACKING SYSTEM) refers to CYFD's mission critical electronic case management system supporting protective services, juvenile justice services, youth and family services and early childhood services, which is accessed by CYFD employees and contractors while at CYFD locations. FACTS provides tracking of referrals for abuse/neglect and delinquency, investigation/preliminary inquiry, legal actions, placements and providers as well as child care assistance.

H. "Incident" for purposes of this policy, refers to any non-routine or emergency action or occurrence that disrupts

or is likely to disrupt the normal operation of the facility. This includes mechanical or physical restraint or other use of force.

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

J. “Mechanical restraint” is defined as a use of force with mechanical devices to physically restrict a client’s freedom of movement, performance of physical activity, or normal access to his or her body. Only staff that has been trained in the proper use of mechanical restraints may apply them. Approved mechanical restraint devices are handcuffs, leg irons, and belt cuffs.

K. “Pat down search” refers to a visual and manual search of a clothed client and the client’s clothing for contraband without the removal of the client’s clothing.

L. “Physical restraint” is the physical use of force on a client by staff to control or restrict the movement of the client using a technique approved by CYFD and taught in a CYFD approved course.

M. “Secretary” refers to the secretary of CYFD.

N. “Secure facility” refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility designated as a secure facility by the director of juvenile justice services.

O. “Serious incident report (SIR)” refers to any occurrence which compromises the safety, security or emotional well-being of clients, staff, and visitors or endangers the public. SIRs are completed by any facility discipline including medical, behavioral/mental health, education or any administrative discipline not involving potential client due process, using an approved form which is prepared and submitted to central office electronically within 24 hours of the occurrence.

P. “Staff” refers to employee(s) of CYFD.

Q. “Strip search” refers to a visual inspection of a client’s body for weapons, contraband and physical abnormalities requiring the client to remove their clothing. This also includes a thorough search of the client’s clothing once it has been removed.

R. “Superintendent” refers to the chief administrator at a juvenile justice services facility.

S. “Youth care specialist” refers to juvenile justice services security employees whose primary duties include working directly with clients.
[8.14.5.7 NMAC - Rp, 8.14.5.7 NMAC,

6/1/2010]

8.14.5.8 SECURITY MANUAL: Juvenile justice services maintains a security manual that designates locations of staff, referenced as posts, with specific direction delineated through post orders that provide standard and emergency operating procedures to each staff member. The security manual shall not generally be made available to the public or clients.
[8.14.5.8 NMAC - N, 6/1/2010]

8.14.5.9 CONTROL CENTER FUNCTIONS: To maintain the necessary security and control of the facility, to promote a primary communication vehicle and to promote safe and orderly operations there shall be a designated control center at secure facilities, operating 24 hours per day to coordinate all security functions and emergency communications. Juvenile justice services shall designate space for these control centers in each of its secure facilities and provide a system that links the control center with all program, service, operational and living areas of the facility.
[8.14.5.9 NMAC - N, 6/1/2010]

8.14.5.10 PERIMETER SECURITY: Each juvenile justice services facility’s perimeter shall be controlled by appropriate means to ensure that pedestrian and vehicle traffic enter and exit through designated points and to prevent unauthorized client movement outside of the perimeter or unauthorized access to the facility by the general public.
[8.14.5.10 NMAC - N, 6/1/2010]

8.14.5.11 SECURITY EQUIPMENT: Juvenile justice services stores all security equipment and related items in a secured but accessible location outside of the client housing and activity areas and maintains a record of equipment distribution for both emergency and routine incidents.
[8.14.5.11 NMAC - Rp, 8.14.5.49 NMAC, 6/1/2010]

8.14.5.12 PERMANENT LOGS: Youth care specialists maintain a permanent log and prepare shift reports that record routine information, emergency situations and unusual incidents. These logs and reports are reviewed by designated staff and filed for future reference.
[8.14.5.12 NMAC - Rp, 8.14.5.33 NMAC, 6/1/2010]

8.14.5.13 CLIENT COUNT AND MOVEMENTS: Juvenile justice services maintains a system of strict accountability for assigned clients that includes maintaining an up-to-date and accurate master roster that accounts for

client admissions, releases, transfers, escapes, absences from the facility and transports. On-duty staff members are responsible for knowing where clients are at all times through formal and informal counts, physical proximity to clients and continuous visual surveillance.
[8.14.5.13 NMAC - Rp, 8.14.5.33 & 40 NMAC, 6/1/2010]

8.14.5.14 GENERAL PATROLS AND INSPECTIONS: Juvenile justice services youth care specialist supervisors shall conduct regular daily patrols and inspections, including weekend and holidays, of all areas occupied by clients, and submit daily reports for managerial review. Weekly inspections shall be conducted of unoccupied areas.
[8.14.5.14 NMAC - Rp, 8.14.5.34 NMAC, 6/1/2010]

8.14.5.15 ADMINISTRATIVE PATROLS AND INSPECTIONS: The facility superintendent or designee, deputy superintendents and designated department heads shall conduct patrols and inspections of client living and activity areas on a weekly basis to encourage informal contact with staff and clients and informally observe living, working and activity conditions.
[8.14.5.15 NMAC - N, 6/1/2010]

8.14.5.16 TOOL AND EQUIPMENT CONTROL: Juvenile justice services monitors the use, storage and accessibility to keys, tools and equipment through a documented check-in and check-out procedure, the use of shadow boards and regularly scheduled inventories.
[8.14.5.16 NMAC - N, 6/1/2010]

8.14.5.17 KEY AND LOCKS CONTROL: Juvenile justice services governs the control and use of keys by designating an individual to maintain a facility key inventory which identifies the location of keys and associated locks; facility keys are marked “do not duplicate” and can only be approved for duplication by the facility superintendent.
[8.14.5.17 NMAC - N, 6/1/2010]

8.14.5.18 USE OF VEHICLES: Juvenile justice services shall allow only authorized drivers and authorized passengers to drive or be transported in a juvenile justice services vehicle. Vehicles shall only be driven or occupied for official state business. Staff members, the public, visitors and clients are encouraged to report any misuse of a state vehicle by a services employee to the juvenile justice services director.
[8.14.5.18 NMAC - Rp, 8.14.5.50 NMAC, 6/1/2010]

8.14.5.19 C L I E N T

TRANSPORTS: In furtherance of community trust, juvenile justice services shall transport its clients in a safe and secure manner that ensures control and maintenance of custody and supervision of the client. Drivers shall be appropriately licensed for the vehicle and shall obey all traffic laws. Vehicles shall be properly equipped for the client being transported, inspected to ensure compliance with applicable laws and regulations, and routinely maintained to ensure safe operating conditions. Client shall be transported with appropriate security measures, and restraints shall only be used according to client risk levels and other safety factors.

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

8.14.5.20 SERIOUS INCIDENT

REPORTING: Juvenile justice services shall utilize a standardized process for reporting serious incidents that involve clients in their custody, employees, or visitors. All serious incidents are reviewed by the facility superintendent and if appropriate filed in the client's permanent record.

[8.14.5.20 NMAC - Rp, 8.14.5.46 NMAC, 6/1/2010]

8.14.5.21 G A N G

MANAGEMENT: Juvenile justice services provides for and engages clients in pro-social skills development programs and services that work toward diminishing and eliminating gang involvement. No client or group of clients shall be given authority over other clients through formal or informal mechanisms. [8.14.5.21 NMAC - Rp, 8.14.5.47 NMAC, 6/1/2010]

8.14.5.22 USE OF FORCE:

Juvenile justice services restricts the use of physical force, including the use of physical and mechanical restraints, to instances of justifiable self defense, protection of a client from hurting him or herself, protection of others, protection of property and the prevention of escapes. Physical force is only used as a last resort in accordance with applicable law, statute and juvenile justice services' policy and procedure. In no event is physical force justifiable as punishment or may the force used exceed what is reasonably required to control the individual or situation.

[8.14.5.22 NMAC - Rp, 8.14.5.42 NMAC, 6/1/2010]

8.14.5.23 PROTECTION

FROM HARM: All instances or complaints of alleged or suspected abuse are reported to the appropriate local law enforcement agency, protective services or the juvenile justice services director or designee immediately upon knowledge of the incident (Section 32A-4-3 NMSA 1978). The

notification must also be noted in FACTS.

[8.14.5.23 NMAC - Rp, 8.14.5.15 NMAC, 6/1/2010]

8.14.5.24 PRISON RAPE

ELIMINATION ACT: The department maintains a comprehensive written procedure regarding the detection, prevention, reduction and punishment of sexual misconduct consistent with the Prison Rape Elimination Act (PREA), a copy of which is kept at each facility. The juvenile justice services director shall direct all departmental personnel, volunteers, interns and contracted personnel to treat all reported incidents of prohibited sexual conduct seriously and ensure that known or suspected acts or allegations of sexual misconduct or client-on-client sexual assault are reported immediately to the facility superintendent for referral to the director for investigation.

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

8.14.5.25 U N I T

MANAGEMENT: Juvenile justice services increases contact between staff and clients, fosters interpersonal relationships and promotes more knowledge-based decision making by subdividing facilities into manageably-sized units with multidisciplinary decision making authority in programming and services.

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

8.14.5.26 DEPLOYMENT:

Staff to client ratios are assessed and maintained according to location, need and safety. Juvenile justice services shall provide an environment that is safe, secure and orderly by having sufficient staff, 24 hours a day, scheduled and located in client living and activity areas to provide for the safety and well-being of clients, staff, visitors, and the general public.

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

8.14.5.27 G E N D E R

RESPONSIVENESS: Juvenile justice services and its contractors and service providers are gender responsive. Juvenile justice services shall maintain at least one staff member of the same gender as a client being supervised in the location of the client.

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

8.14.5.28 C O N T R A B A N D

CONTROL: Juvenile justice services considers any item found inside the perimeter of a facility or in possession of a client, staff member or visitor inside the perimeter of a facility contraband if it is illegal to possess by law, illegal for minors to own or possess, or specifically listed in the department's prohibited item list. Seized items of contraband will be disposed of in accordance to New Mexico state statute or as detailed in applicable procedures, and

may be turned over to law enforcement for prosecution.

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

8.14.5.29 SEARCHES:

Juvenile justice services staff, or if necessary supervisory or law enforcement personnel, may conduct or authorize pat down or strip searches anytime there is an articulated and documented safety or security issue. Staff may search clients, visitors, other staff, living units and program areas. Searches may be conducted to ensure health, safety and security, to control contraband or to recover missing persons or property. Upon entry or exit of a secure facility, all vehicles and personal belongings are subject to being searched. If there is an articulated and documented safety or security issue with a JJS staff person, supervisory staff or law enforcement will be called to search the subject of the concern.

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

8.14.5.30 BODY CAVITY

SEARCHES: Juvenile justice services expressly prohibits manual or instrument inspections of body cavities without the execution of a warrant for probable cause by a sworn peace officer. If such a warrant is issued, such inspections shall only be conducted in an emergency room of a medical facility with a JJS medical staff person of the same gender as the client present to witness the search and record results.

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

8.14.5.31 E V I D E N C E

DISPOSITION: Juvenile justice services provides for the recording, preservation, control and disposition of all physical evidence obtained in connection with a violation of the criminal code or in violation of the policy and procedures of the CYFD's juvenile justice services. Evidence or property seized shall have a documented chain of custody and be handled, stored and disposed of in a lawful manner.

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

8.14.5.32 E M E R G E N C Y

OPERATIONS: In furtherance of the public trust, juvenile justice services' maintains written emergency plans, and distributes and trains key personnel in the manner which these plans are to be carried out during an actual emergency. These plans also include specific information on a means to immediately release clients from locked areas and procedures to be followed in situations that threaten facility security. Emergency procedures shall include plans for work actions, strikes or staff walkouts; facility disturbances or riot control; natural disasters or inclement weather; escapes; utility failures; bomb threats and explosions; hostages and negotiations; epidemics

or pandemics; fire emergencies or mass evacuations; a person found hanging by the neck or emergency response teams.
[8.14.5.32 NMAC - N, 6/1/2010]

8.14.5.33 PROCEDURES: The juvenile justice services director will make appropriate internal procedures available to the public but reserves the right to add, delete or modify internal procedures without notice or comment in furtherance of the mission and goals of the department or service area.
[8.14.5.33 NMAC - N, 6/1/2010]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 16 HUMAN RESOURCES AND TRAINING PLAN

8.14.16.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.16.1 NMAC - N, 6/1/2010]

8.14.16.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.
[8.14.16.2 NMAC - N, 6/1/2010]

8.14.16.3 STATUTORY AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.16.3 NMAC - N, 6/1/2010]

8.14.16.4 DURATION: Permanent.
[8.14.16.4 NMAC - N, 6/1/2010]

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

8.14.16.6 OBJECTIVE: To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision or in the custody of the department including implementation of Cambiar New Mexico. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients.
[8.14.16.6 NMAC - N, 6/1/2010]

8.14.16.7 DEFINITIONS:

A. "Cambiar (Change)

New Mexico" refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services' staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old "correctional" model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

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

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

D. "Director" refers to the juvenile justice services director.

E. "Facility" refers to a facility operated by, or on behalf of the CYFD's juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

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

G. "Secretary" refers to the secretary of CYFD.

H. "Secure facility" refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility designated a secure facility by the director of juvenile justice services.

I. "Student intern" refers to an unpaid student who works at CYFD as part of a university education program for credit or a grade. The university and the CYFD sign a standard student internship agreement that governs the conditions of the internship. A CYFD employee supervises the student intern when the student intern when the student provides services or works with CYFD clients. Student interns undergo a level 1, 2 or 3 background check depending on the nature of their duties

J. "Staff" refers to employee(s) of CYFD.

K. "Superintendent" refers to the chief administrator at a juvenile justice services facility.

L. "Volunteer" any unpaid person (community member, student, etc) that provides services to clients or otherwise participates in the CYFD workplace. Generally, CYFD employees supervise volunteers who interact with CYFD clients,

except in certain circumstances in juvenile justice services facilities. Volunteers receive a level 1, 2 or 3 background check depending on the nature of their duties.

M. "Youth care specialist" refers to juvenile justice services security employees whose primary duties include working directly with clients.
[8.14.16.7 NMAC - N, 6/1/2010]

8.14.16.8 HUMAN RESOURCE MANAGEMENT: There are procedures specific to juvenile justice services for human resources management. Each employee has access to these policies and procedures.
[8.14.16.8 NMAC - N, 6/1/2010]

8.14.16.9 STAFF PRE-EMPLOYMENT SCREENING: All qualified applicants for youth care specialist positions must take a pre-employment selection test. All juvenile justice services employees whose jobs involve direct contact with children youth and families department clients, including prospective employees and employees who are promoted, transferred or hired into new positions are subject to a background check including a nationwide criminal record search through fingerprints, and subject to medical screening in accordance with state law.

[8.14.16.9 NMAC - Rp, 8.14.1.26 NMAC, 6/1/2010]

8.14.16.10 EMPLOYMENT OF EX-OFFENDERS: Juvenile justice services conforms to the New Mexico Criminal Offender Employment Act with regards to an employment eligibility determination and the power to refuse, renew, suspend or revoke employment or a license as a direct result of criminal behavior.
[8.14.16.10 NMAC - Rp, 8.14.1.26 NMAC, 6/1/2010]

8.14.16.11 CONTRACTORS, VOLUNTEERS AND STUDENT INTERNS: Juvenile justice services fingerprints and conducts nationwide criminal history record searches on all contract or service providers, volunteers and student interns who have direct unsupervised client contact. The background check for contract or service providers, volunteers and student interns without direct unsupervised client contact includes a state level check and an abuse and neglect screening of the protective services database.
[8.14.16.11 NMAC - Rp, 8.14.1.27 NMAC, 6/1/2010]

8.14.16.12 PROFESSIONAL APPEARANCE: Juvenile justice services employees contract or service providers, student interns, volunteers and visitors shall present a professional or appropriate appearance while on juvenile justice service

property. In addition, the director of juvenile justice services may establish reasonable dress standards that are set forth clearly in procedure or memorandum. An employee who arrives at work in inappropriate attire may be sent home on annual leave or leave without pay to change into appropriate clothing and may be subject to disciplinary action. Visitors that arrive to a juvenile justice services facility in inappropriate attire can be refused admittance.

[8.14.16.12 NMAC - Rp, 8.14.1.41 NMAC, 6/1/2010]

8.14.16.13 CONTACT INFORMATION: Juvenile justice services maintains contact information on all employees, contract or service providers, student interns or volunteers. Employees are required to immediately report any change in their telephone number or mailing address to their supervisor and request an update to their personnel file through the human resources bureau.

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

8.14.16.14 PERSONAL PROPERTY: Juvenile justice services employees contract or service providers, student interns, volunteers and visitors are expected to exercise reasonable caution in safeguarding their personal clothing, jewelry, and possessions.

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

8.14.16.15 AFTER HOURS RESPONDERS: Juvenile justice services is prepared to respond to the public and operational issues by designating personnel to respond to emergencies and unusual incidents after traditional working hours. Employees designated to respond must be able to respond within 10 minutes by telephone, or if required to report to a designated location, within 60 minutes of the request. An employee who cannot be reached, fails to promptly respond, or reports in a condition of being unable to perform their duties may be subject to disciplinary action.

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

8.14.16.16 EMPLOYEE ASSISTANCE PROGRAM: Budget permitting, the risk management division of the general services department maintains a counseling or referral process for employees with a personal problem that affects or has the potential to affect the employee's job performance.

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

8.14.16.17 CODE OF CONDUCT: To protect the public trust and integrity of CYFD, juvenile justice services and the staff and clients associated therein, all personnel shall be provided, familiarized

with and held accountable to an employee code of conduct.

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

8.14.16.18 TRAINING PLAN: Juvenile justice services shall provide a training program categorized by job classification for all employees, contract or service providers, student interns, or volunteers that is job-relevant and consistent in meeting the program and services needs of our clients. The training program shall be planned, coordinated and implemented by qualified employees under the consultation of the professional development bureau and director of juvenile justice services.

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

8.14.16.19 TRAINING ADVISORY COMMITTEE: The director of juvenile justice services, in conjunction with the professional development bureau chief, shall assign trainers and key facility staff to a training advisory committee to evaluate and update the training plan and curriculums based on job related and performance needs.

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

8.14.16.20 TRAINERS: Juvenile justice services shall only use qualified trainers that have completed an approved train-the-trainer course, have other specialized training or education in adult learning theory, or have a recognized skill or ability as demonstrated through experience or education as determined by the professional development bureau or director of juvenile justice services.

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

8.14.16.21 TRAINING CALENDAR: Juvenile justice services, in conjunction with the professional development bureau, shall establish and maintain a training calendar detailing training offerings for each quarter of the calendar year. The training calendar shall provide sufficient offerings to meet training mandates and timeframes for all employees.

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

8.14.16.22 TRAINING RESOURCES: Juvenile justice services supports the development and training of staff through both internal and external resources and encourages staff to participate in educational seminars, membership and participation in professional associations, continuing education opportunities, and other relevant training opportunities to augment the internal training calendar and resources provided through the professional development bureau. Relevant training may be reimbursed as budget permits.

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

8.14.16.23 REQUIRED TRAINING: Juvenile justice services considers specific training hours and specific training subjects critical to the success of each employee, contract employee, volunteer or intern operating at a facility. Juvenile justice services employees will be required to complete the number of yearly recertification hours as established by the director of juvenile justice services.

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

8.14.16.24 CONTACT WITH CURRENT AND FORMER JJS CLIENTS AND FAMILIES:

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

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

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

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

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

HISTORY OF 8.14.16 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

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

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

8.14.1 NMAC, General Provisions, filed 12/16/2005 - Repealed effective 6/1/2010.

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
JUVENILE JUSTICE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 17 INFORMATION
MANAGEMENT**

8.14.17.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.17.1 NMAC - N, 6/1/2010]

8.14.17.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.
[8.14.17.2 NMAC - N, 6/1/2010]

**8.14.17.3 S T A T U T O R Y
AUTHORITY:** Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.17.3 NMAC - N, 6/1/2010]

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

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

8.14.17.6 OBJECTIVE: To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision or in the custody of the department including implementation of Cambiar New Mexico. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients.
[8.14.17.6 NMAC - N, 6/1/2010]

8.14.17.7 DEFINITIONS:

A. “Cambiar (Change) New Mexico” refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services’ staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old “correctional” model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. “Client” refers to a

person who is committed to the custody of the CYFD juvenile justice services or who is receiving services from CYFD’s juvenile justice services.

C. “Department” refers to the New Mexico children, youth and families department.

D. “Director” refers to the juvenile justice services director.

E. “Facility” refers to a facility operated by, or on behalf of the CYFD’s juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

F. “Files and records” means the master delinquency file of a JJS client, which includes all facility master file records and field referral records, and actions taken while in custody including but not limited to commitment papers, court orders, detainers, personal property receipts, visitor’s lists, photographs, fingerprints, types of custody, disciplinary infractions with actions taken, work assignments, program participation, program progress and other relevant case data. It does not include the separate medical, behavioral health, or education sub files.

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

H. “Secretary” refers to the cabinet secretary of the New Mexico CYFD.

I. “Secure facility” refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility designated a secure facility by the director of juvenile justice services.

J. “Staff” refers to employee(s) of CYFD.

K. “Superintendent” refers to the chief administrator at a JJS facility.

L. “Youth care specialist” refers to juvenile justice services security employees whose primary duties include working directly with clients.
[8.14.17.7 NMAC - N, 6/1/2010]

8.14.17.8 INFORMATION MANAGEMENT: Juvenile justice services governs the establishment, use, content, access, privacy, storage, preservation, and destruction of operational and client files and records. In addition, procedures are in place for information storage and retrieval, master indexes, daily reports, evaluations and research.
[8.14.17.8 NMAC - N, 6/1/2010]

8.14.17.9 FILES AND RECORDS MANAGEMENT: Juvenile justice services maintains data on every client committed to its care and custody and establishes a record of services, programs, care, treatment, progress and interventions experienced by the client during their commitment. The content, access, storage and preservation of these files and records, and sub files, are controlled.
[8.14.17.9 NMAC - Rp, 8.14.1.24 NMAC, 6/1/2010]

8.14.17.10 NOTIFICATION AND REPORTING: Juvenile justice services promptly notifies key personnel of issues, situations and incidents that present a risk to clients, employees, visitors and the community.
[8.14.17.10 NMAC - Rp, 8.14.1.20 NMAC, 6/1/2010]

8.14.17.11 STANDARDIZED REPORTING: Juvenile justice services maintains a standardized reporting format and frequency to evaluate facility and program performance. Facility reports are written quarterly and include major developments, major incidents, population data, staff and client morale and major problems and plans for fixing them.
[8.14.17.11 NMAC - N, 6/1/2010]

8.14.17.12 S T A N D A R D MEETING SCHEDULES: Juvenile justice services maintains a schedule of standard meetings to promote communication between the director’s office, facility superintendents, administrative department heads, managerial and supervisory personnel and other employees.
[8.14.17.12 NMAC - N, 6/1/2010]

8.14.17.13 R E S E A R C H REQUESTS AND REVIEWS: Juvenile justice services encourages appropriate scientific research which contributes to our knowledge of juvenile delinquency and promotes improvement in the juvenile justice system. No research activities can be initiated unless approved by the director of juvenile justice services.
[8.14.17.13 NMAC - Rp, 8.14.1.28 NMAC, 6/1/2010]

8.14.17.14 A U T O M A T E D INFORMATION SYSTEMS: Juvenile justice services maintains and utilizes electronic or automated information systems to produce reports, facilitate decision making, and timely respond to inquiries, as well as a mechanism for regular storage, retrieval and review of client and operational information.
[8.14.17.14 NMAC - N, 6/1/2010]

8.14.17.15 PROCEDURES: The juvenile justice services director will make appropriate procedures available to the public but reserves the right to add, delete or modify procedures under the information management policy without notice or comment in furtherance of the mission and goals of the department or service area. [8.14.17.15 NMAC - N, 6/1/2010]

HISTORY OF 8.14.17 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

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

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

8.14.1 NMAC, General Provisions, filed 12/16/2005 - Repealed effective 6/1/2010.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 18 PHYSICAL PLANT MANAGEMENT

8.14.18.1 ISSUING AGENCY: Children, Youth and Families Department. [8.14.18.1 NMAC - N, 6/1/2010]

8.14.18.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department. [8.14.18.2 NMAC - N, 6/1/2010]

8.14.18.3 STATUTORY AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended. [8.14.18.3 NMAC - N, 6/1/2010]

8.14.18.4 DURATION: Permanent. [8.14.18.4 NMAC - N, 6/1/2010]

8.14.18.5 EFFECTIVE DATE: June 1, 2010, unless a later date is cited at the end of a section. [8.14.18.5 NMAC - N, 6/1/2010]

8.14.18.6 OBJECTIVE: To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision or in the custody of the department including implementation of Cambiar New Mexico. This rule further establishes guidelines to address the safety

of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients. [8.14.18.6 NMAC - N, 6/1/2010]

8.14.18.7 DEFINITIONS:

A. "Cambiar (Change) New Mexico" refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services' staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old "correctional" model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. "ADA" refers to the Americans with Disabilities Act.

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

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

E. "Director" refers to the juvenile justice services director.

F. "Facility" refers to a facility operated by, or on behalf of the CYFD's juvenile justice services, or any other facility or location designated by the juvenile justice services' director to house or provide care to clients committed to the custody of the CYFD.

G. "Fire code" refers to the federal, state or local regulations governing fire safety.

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

I. "Physical plant manager" refers to a juvenile justice services employee whose primary responsibility is for the care, maintenance, repair and condition of juvenile justice services' buildings, grounds and structures.

J. "Preventive maintenance" refers to a system designed to enhance the longevity or usefulness of buildings and equipment in accordance with a planned schedule of inspection and maintenance.

K. "Secretary" refers to the secretary of the New Mexico CYFD.

L. "Secure facility" refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility

designated a secure facility by the director of juvenile justice services.

M. "Staff" refers to employee(s) of CYFD.

N. "Superintendent" refers to the chief administrator at a JJS facility.

O. "Youth care specialist" refers to juvenile justice services security employees whose primary duties include working directly with clients. [8.14.18.7 NMAC - N, 6/1/2010]

8.14.18.8 PHYSICAL PLANT MANAGEMENT: To ensure the health, safety and security of all clients, visitors and staff, buildings owned or operated by juvenile justice services shall comply with applicable building, health, fire and safety codes, including the Americans With Disabilities Act (ADA), and maintain a "certificate of occupancy" on site. [8.14.18.8 NMAC - N, 6/1/2010]

8.14.18.9 FIRE PREVENTION: Juvenile justice services shall develop and operate a fire prevention plan that provides for fire alarm systems, fire safety guidelines, drills, testing of equipment, coordination with local fire departments and assurance that all interior furnishing or finishing materials in client living areas, exit areas and places of public assembly comply with applicable local, state and national fire codes. [8.14.18.9 NMAC - N, 6/1/2010]

8.14.18.10 PHYSICAL PLANT MONITORING, ASSESSMENT AND INSPECTIONS: Juvenile justice services maintains a regular monitoring, assessment and inspection schedule as part of its fire and safety, plant management, loss control and preventive maintenance plans. [8.14.18.10 NMAC - N, 6/1/2010]

8.14.18.11 LOSS CONTROL: Juvenile justice services shall maintain a loss control and prevention program that includes the establishment of a loss control committee for each facility that reviews procedures for self-inspections, conducts loss investigations and develops programs for safety education. [8.14.18.11 NMAC - N, 6/1/2010]

8.14.18.12 PREVENTIVE MAINTENANCE: Each juvenile justice services facility shall conduct a comprehensive preventive maintenance program for the physical plant which provides for emergency repairs or replacement of equipment or property in life threatening situations. [8.14.18.12 NMAC - N, 6/1/2010]

8.14.18.13 WORK - ORDER SYSTEM: Juvenile justice services

maintains a documented work-order system which provides for how routine maintenance requests are submitted and handled. In addition, the work-order system provides for how urgent maintenance requests are submitted and handled with direct notification to the physical plant manager and facility superintendent for any request that impacts safety.

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

8.14.18.14 FIRE AND SAFETY:

Juvenile justice services shall designate a qualified staff member at each facility who has the primary responsibility to coordinate the facility fire and safety plans.

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

8.14.18.15 HOUSEKEEPING:

Juvenile justice services facilities shall develop and implement a housekeeping procedure that conforms to environmental, sanitation, fire and safety and hygienic living conditions for clients. Standards shall be set by applicable local, state or federal regulations or nationally accepted codes or standards.

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

8.14.18.16 HOUSING AND LIVING CONDITION STANDARDS:

Juvenile justice services shall meet the minimum standards, pursuant to a recognized national standard, in existing or new construction of structures dedicated as client housing or living space.

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

8.14.18.17 ANCILLARY SPACE STANDARDS:

Juvenile justice services shall meet the minimum standards, pursuant to a recognized national standard, in existing or new construction of structures dedicated as support, service or ancillary space.

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

8.14.18.18 NEW CONSTRUCTION:

Prior to building a new facility or expanding an existing facility, juvenile justice services will conduct a needs evaluation based on bed capacity, regionalization, or other identified needs.

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

8.14.18.19 DISPLAY OF FLAGS:

Juvenile justice services shall engender reverence and respect for the flags of the United States of America and the state of New Mexico by strict observance of the laws, customs and traditions relating to the same.

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

8.14.18.20 RECYCLING:

In accordance with the New Mexico state Solid Waste Act, juvenile justice services supports programs to reduce waste and achieve

minimal adverse impact on the air, water and land through assisting facilities in reducing the amount of waste generated by operations and promoting the separation of refuse from recyclable materials. In addition, juvenile justice services assists facilities in the collection, storage and disposition of recyclables and in locating goods produced with recyclable materials.

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

8.14.18.21 PROCEDURES: The juvenile justice services director will make appropriate procedures available to the public but reserves the right to add, delete or modify procedures under the physical plant management policy without notice or comment in furtherance of the mission and goals of the department or service area.

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

HISTORY OF 8.14.18 NMAC:

[RESERVED]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 14 JUVENILE JUSTICE PART 19 FISCAL MANAGEMENT AND INVENTORY CONTROL

8.14.19.1 ISSUING AGENCY:

Children, Youth and Families Department.

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

8.14.19.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.

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

8.14.19.3 STATUTORY

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

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

8.14.19.4 DURATION:

Permanent.

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

8.14.19.5 EFFECTIVE DATE:

June 1, 2010, unless a later date is cited at the end of a section.

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

8.14.19.6 OBJECTIVE:

To establish standards and guidelines for programs which serve the best interest of

the clients, persons and property under the supervision or in the custody of the department including implementation of Cambiar New Mexico. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients.

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

8.14.19.7 DEFINITIONS:

A. "Budget" refers to a plan for allocation and anticipated revenues and expenditures.

B. "Cambiar (Change) New Mexico" refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services' staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old "correctional" model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

C. "Canteen or commissary" refers to an area or system where approved items are available for purchase by juvenile justice services' clients.

D. "Client" refers to a person who is committed to the custody of the CYFD department's (CYFD) juvenile justice services or who is receiving services from CYFD's juvenile justice services.

E. "Department" refers to the New Mexico CYFD department.

F. "Director" refers to the juvenile justice service director.

G. "Facility" refers to a facility operated by, or on behalf of the CYFD department's juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD department.

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

I. "Secretary" refers to the cabinet secretary of CYFD.

J. "Secure facility" refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility designated a secure facility by the director of juvenile justice services.

K. "Staff" refers to employee(s) of CYFD.

L. "Superintendent" refers to the chief facility administrator at a

JJS facility.

M. “Youth care specialist” refers to juvenile justice services’ security employees whose primary duties include working directly with clients.
[8.14.19.7 NMAC - N, 6/1/2010]

8.14.19.8 FISCAL MANAGEMENT AND INVENTORY CONTROL: Juvenile justice services maintains accountability for resources and assets through fiscal planning, budgeting, acceptable accounting procedures and regular auditing and review. This includes the use of appropriately qualified fiscal officers, designated administrators responsible for fiscal management and control, meeting department of finance and administration regulations and fostering staff participation in budget preparation, requests and revisions.
[8.14.19.8 NMAC - N, 6/1/2010]

8.14.19.9 CHIEF FINANCIAL OFFICER: The deputy director for administration is the designated chief financial officer for juvenile justice services and responsible for fiscal management and control through the maintenance of an accounting system designed to show the current status of all appropriations and expenditures.
[8.14.19.9 NMAC - N, 6/1/2010]

8.14.19.10 FRAUDULENT ACTIVITIES: Any employee who has reasonable suspicion that a violation involving a financial matter has occurred regarding agency fiscal management or control, regardless if state funding is involved, must report the matter to the director of juvenile justice services or appropriate law enforcement or regulatory body.
[8.14.19.10 NMAC - N, 6/1/2010]

8.14.19.11 BUDGET PREPARATION, REQUESTS AND REVISIONS: Juvenile justice services shall conduct an annual meeting with superintendents, administrative department heads and other key staff members to discuss funding daily operations, additional supply or equipment needs, capital improvement planning, financing program development, short and long range objectives, staffing and any additional budget requests or revisions.
[8.14.19.11 NMAC - N, 6/1/2010]

8.14.19.12 CLIENT FUNDS: Juvenile justice services maintains a system to account for client funds that includes an agency fund trust bank account, monitored and controlled using accepted accounting procedures. All contributing clients are provided with a monthly statement that includes prior period balances, itemized

expenditures, and ending balances forwarded for the current accounting period.
[8.14.19.12 NMAC - N, 6/1/2010]

8.14.19.13 CLIENT PERSONAL ACCOUNTS: Juvenile justice services allows approved clients to open personal accounts with a federally insured financial institution, or if clients have a preexisting account, to maintain the account. Access to personal client accounts shall be guided and approved by juvenile justice services.
[8.14.19.13 NMAC - N, 6/1/2010]

8.14.19.14 CLIENT FUND INTEREST: Any interest gained from a juvenile justice services fund trust account contributed to by the client or their family shall accrue to the benefit of the client.
[8.14.19.14 NMAC - N, 6/1/2010]

8.14.19.15 CLIENT RESTITUTION: Juvenile justice services may disburse funds from a client’s account to secure court ordered restitution payments or other legally binding financial obligations until such time as the obligation is met.
[8.14.19.15 NMAC - N, 6/1/2010]

8.14.19.16 CLIENT TRANSACTIONS: Staff members, staff member families, clients, client families, volunteers, volunteer families, contract providers or interns are not allowed to enter into or engage in financial transactions with clients without the prior written approval of the director of juvenile justice services.
[8.14.19.16 NMAC - N, 6/1/2010]

8.14.19.17 CLIENT COMMISSARY: Clients may have the ability to purchase items that are not furnished by the facility through a juvenile justice services operated canteen or commissary.
[8.14.19.17 NMAC - N, 6/1/2010]

8.14.19.18 FUNDRAISING: Juvenile justice services permits fundraising activities that benefit the clients of a facility or unit. Fundraising activities are not approved for the benefit of non-clients. All fundraising activities must be pre-approved and all monies handled in accordance with cash handling procedures.
[8.14.19.18 NMAC - N, 6/1/2010]

8.14.19.19 PETTY CASH: Juvenile justice services shall maintain petty cash accounts and shall disburse cash for small purchases of immediate need. Limits and exceptions on petty cash are established by the department of finance and administration. All cash collected and disbursed from petty cash accounts shall be reported to the deputy director of administration or designee on a daily basis.
[8.14.19.19 NMAC - N, 6/1/2010]

8.14.19.20 CASH HANDLING: CYFD maintains proper safeguards and internal controls for all cash handling in accordance with state statute, department of finance and administration rule or regulation and generally accepted accounting principles. All monies collected within the agency shall be placed in an officially designated secure location, on a daily basis.
[8.14.19.20 NMAC - N, 6/1/2010]

8.14.19.21 FIXED ASSETS CONTROL: Juvenile justice services shall maintain fixed asset records in order to protect the physical plant and equipment from theft, misuse or undue wear and tear. In addition, stewardship responsibility for particular assets assigned to specific individuals shall be recorded and regularly monitored for on-going repairs and preventive maintenance schedules.
[8.14.19.21 NMAC - N, 6/1/2010]

8.14.19.22 SUPPLIES, MATERIALS AND EQUIPMENT CONTROL: Juvenile justice services maintains control, care and security over all supplies, materials and equipment. Inventory controls systems shall be developed based on size, complexity, usage frequency and storage amount. Inventory control shall include both perpetual and periodic inventories to ensure sufficient quantities to perform daily operations while avoiding waste through over or redundant ordering.
[8.14.19.22 NMAC - N, 6/1/2010]

8.14.19.23 GAS AND PURCHASE CARD USE: CYFD approves the use of New Mexico gasoline credit cards for the purchase of gasoline and other items necessary for the appropriate maintenance of state vehicles. An authorized list of approved purchases shall be maintained by the deputy director of administration and made available to all facilities, departments or service areas authorized to use New Mexico gasoline credit cards.
[8.14.19.23 NMAC - N, 6/1/2010]

8.14.19.24 AUDITING AND REVIEW SCHEDULES: In accordance with department of finance and administration rules and regulations, juvenile justice services shall conduct or provide for independent financial audits of its facilities, administrative and service areas.
[8.14.19.24 NMAC - N, 6/1/2010]

8.14.19.25 CONTRACT AND VENDOR SERVICES: Juvenile justice services will follow the practices in procuring and utilizing contractual or vendor services as prescribed by the department of finance and administration rules and regulations, applicable CYFD policies,

service contract content and bid specification and performance.

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

8.14.19.26 PROCEDURES: The juvenile justice services director will make appropriate procedures available to the public but reserves the right to add, delete or modify procedures under the fiscal management and inventory control policy without notice or comment in furtherance of the mission and goals of the department or service area.

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

HISTORY OF 8.14.19 NMAC:
[RESERVED]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 20 CLIENT RIGHTS
AND SERVICES**

8.14.20.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.20.1 NMAC - N, 6/1/2010]

8.14.20.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.
[8.14.20.2 NMAC - N, 6/1/2010]

**8.14.20.3 S T A T U T O R Y
AUTHORITY:** Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.20.3 NMAC - N, 6/1/2010]

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

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

8.14.20.6 OBJECTIVE: To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision or in the custody of the department including implementation of Cambiar New Mexico. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the

delivery of services to our clients.

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

8.14.20.7 DEFINITIONS:

A. "Cambiar (Change) New Mexico" refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services' staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old "correctional" model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

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

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

D. "Director" refers to the juvenile justice services director.

E. "Facility" refers to a facility operated by, or on behalf of the CYFD's juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

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

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

H. "Secretary" refers to the cabinet secretary of CYFD.

I. "Secure facility" refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility designated a secure facility by the director of juvenile justice services.

J. "Staff" refers to employee(s) of CYFD.

K. "Superintendent" refers to the chief administrator at a JJS facility.

L. "Youth care specialist" refers to juvenile justice services safety and security employees whose primary duties include working directly with clients.

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

8.14.20.8 CLIENT RIGHTS AND SERVICES: Juvenile justice services protects the safety and constitutional rights of clients committed to their care and custody, promotes the rehabilitative process through the provision of mandated and recognized services and strives to maintain a balance between the expression of individual freedoms and the safe, secure and orderly operation of its facilities.

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

8.14.20.9 CLIENT COURT, COUNSEL AND MEDIA ACCESS: Each client placed in the care and custody of the juvenile justice services shall have the right to have confidential contact with the courts, counsel, authorized representatives of counsel, and the media subject only to limitations necessary to maintain facility order and security, pursuant to procedures developed for this policy. All clients shall be assured that seeking judicial relief will not be met with reprisal or penalty from any agent or officer of CYFD and that these rights cannot be diminished or denied for disciplinary reasons.

[8.14.20.9 NMAC - Rp, 8.14.1.30 NMAC, 6/1/2010]

8.14.20.10 CLIENT PRIMARY LANGUAGE: If a client's primary language is a language other than English, the client may speak that language at any time that English is allowed except for when doing so would interfere with programming or communication, such as in classroom or group discussions, group activities, or when speaking with a staff member who does not understand the client's primary language.

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

8.14.20.11 CLIENT RIGHT TO TELEPHONE USE: To maintain ties with the community, each client in the care and custody of juvenile justice services shall have access to a telephone to make and receive personal telephone calls with frequency and time allotments subject only to the facility schedule and their respective program evaluation level.

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

8.14.20.12 CLIENT RIGHT TO CORRESPONDENCE: To maintain ties with the community, clients in the care and custody of juvenile justice services have the right to send and receive written correspondence with members of their family and other persons or organizations subject only to the limitations necessary to maintain order and security of the facility. Clients are also allowed to send and receive packages subject to procedure.

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

8.14.20.13 CLIENT RIGHT TO VISITATION: To maintain ties with the community, each client in the care and custody of juvenile justice services shall have the right of regular visitation with frequency and time allotments subject only to valid safety and security concerns, the facility schedule and their respective program evaluation level. Visitation shall foster the ability for informal communication, including the opportunity for physical contact, unless otherwise directed by the superintendent for cause.
[8.14.20.13 NMAC - N, 6/1/2010]

8.14.20.14 CLIENT PERSONAL GROOMING: Juvenile justice services regulates personal grooming at the least restrictive level necessary and allows clients freedom in personal grooming unless a safety, security, identification or hygienic interest justifies otherwise.
[8.14.20.14 NMAC - N, 6/1/2010]

8.14.20.15 RIGHT OF GRIEVANCE COMPLAINT AND APPEAL: The client grievance and appeal procedure is written and made available to all clients and families and includes at least one level of appeal. The published process for submitting a grievance is posted and grievance boxes are provided nearby in conspicuous places for clients and families in each living unit and common areas. Grievances are transmitted confidentially and without alteration, interference, or delay to the party responsible for receipt and investigation. A written report on the final disposition of a grievance is prepared and filed, and a copy given to the client.
[8.14.20.15 NMAC - N, 6/1/2010]

8.14.20.16 RULES OF CONDUCT: Juvenile justice services provides clients written rules of conduct and the consequences followed when rules are broken. All consequences are carried out promptly and are guided by Cambiar philosophy.
[8.14.20.16 NMAC - N, 6/1/2010]

8.14.20.17 CLIENT LABOR AND FACILITY WORK PROGRAMS: Under the supervision of juvenile justice services, able bodied clients are expected to participate in uncompensated work associated with the care of the facility or for assigned community justice restoration or restitution programs. Clients shall not perform work prohibited by state or federal laws pertaining to child labor, nor be allowed to perform work assignments that expose them to dangerous working conditions. In addition, no private organization or individual may profit from client labor unless the client has been approved to participate in a community work program at the prevailing

rate or assigned an approved facility work assignment with specified compensation.
[8.14.20.17 NMAC - N, 6/1/2010]

8.14.20.18 CLIENT RELIGIOUS FREEDOM: All juvenile justice services facilities recognize the individual client right to adhere to the tenements of his/her religion or faith. Subject only to limitations necessary to maintain safety and security, clients shall have access to religious literature, to representatives of faith, and to religious counseling. Participation in religious programs and activities is voluntary. Each facility shall provide adequate space and plan and coordinate religious activities. No particular religious faith shall be endorsed or required; nor shall any client be punished, disciplined or discriminated against for participation or non-participation in religious or spiritual activities. Religious activities or participation may never be denied or attendance required solely for disciplinary reasons or as punishment.
[8.14.20.18 NMAC - N, 6/1/2010]

8.14.20.19 CLIENT PROPERTY: Juvenile justice services governs the control and safeguarding of client personal and state issued property. Allowable personal property shall be itemized in a written list that becomes part of the client's permanent record. Clients are prohibited from trading, loaning, selling or possessing property approved for another client. In addition, juvenile justice services issues required property to clients including clothing that is properly fitted, climatically suitable, durable, and presentable.
[8.14.20.19 NMAC - N, 6/1/2010]

8.14.20.20 CLIENT HYGIENE AND LAUNDRY SERVICES: Juvenile justice services' sanitation and hygiene program complies with applicable state or federal regulations and protects the health and safety of clients and staff. This includes regular sanitation inspections, appropriate waste disposal, control of vermin, regular housekeeping, an appropriate supply of bedding, clothing and linens, client hair care services, scheduled access to showering or bathing facilities, and laundry services that ensure that clients have three sets of clean clothing per week.
[8.14.20.20 NMAC - N, 6/1/2010]

8.14.20.21 RECREATION PLAN: Juvenile justice services provides clients with an organized and planned calendar of recreational and leisure time activities, supervised by qualified staff, to maintain good morale, improve physical fitness and well-being, teach leisure time skills, prevent idleness and reinforce cooperation and sportsmanship.
[8.14.20.21 NMAC - N, 6/1/2010]

8.14.20.22 CLIENT VIEWING, LISTENING AND READING MATERIALS: Juvenile justice services provides and encourages clients to use personal media materials, including books, magazines, movies, television programs, audiotapes and discs that are age-appropriate and beneficial to the growth, wholesome entertainment and education of clients in its care and custody. Materials that are pornographic, excessively violent, or which threaten the order, safety or security of the facility are prohibited.
[8.14.20.22 NMAC - N, 6/1/2010]

8.14.20.23 FOOD SERVICE: Juvenile justice services provides for meals that are nutritionally balanced, well planned, and prepared and served in a manner that meets the rules and regulations set forth by the New Mexico environment department or other recognized health authority. Menus are reviewed by a registered dietician, include appropriate medical or religious substitutions, and the food provided shall be regularly monitored for flavor, texture, temperature, appearance and palatability. Food is never used as a disciplinary measure.
[8.14.20.23 NMAC - N, 6/1/2010]

8.14.20.24 PROCEDURES: The juvenile justice services director will make appropriate procedures available to the public but reserves the right to add, delete or modify procedures under the client rights and services policy without notice or comment in furtherance of the mission and goals of the department or service area.
[8.14.20.24 NMAC - N, 6/1/2010]

HISTORY OF 8.14.20 NMAC:
Pre-NMAC History: [RESERVED]

History of Repealed Material:
8 NMAC 14.1, General Provisions, filed 11/2/98 - Repealed effective 8/31/2005.
8.14.1 NMAC, General Provisions, filed 8/15/2005 - Repealed effective 12/30/2005.
8.14.1 NMAC, General Provisions, filed 12/16/2005 - Repealed effective 6/1/2010.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 21 CLASSIFICATION
AND PROGRAMS**

8.14.21.1 ISSUING AGENCY:
Children, Youth and Families Department.
[8.14.21.1 NMAC - N, 6/1/2010]

8.14.21.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.
[8.14.21.2 NMAC - N, 6/1/2010]

8.14.21.3 S T A T U T O R Y AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.21.3 NMAC - N, 6/1/2010]

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

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

8.14.21.6 OBJECTIVE: To establish standards and guidelines for programs which serve the best interest of the clients, persons and property under the supervision or in the custody of the department including implementation of Cambiar New Mexico. This rule further establishes guidelines to address the safety of clients and staff and for the protection of department resources. This rule emphasizes the value and importance of staff in the delivery of services to our clients.
[8.14.21.6 NMAC - N, 6/1/2010]

8.14.21.7 DEFINITIONS:
A. “Cambiar (Change) New Mexico” refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services’ staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old “correctional” model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. “Client” refers to a person who is committed to the custody of the CYFD juvenile justice services or who is receiving services from CYFD’s juvenile justice services.

C. “Department” refers to the New Mexico children, youth and families department.

D. “Director” refers to the juvenile justice services director.

E. “Facility” refers to a facility operated by, or on behalf of the CYFD’s juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the

custody of CYFD.

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

G. “Media” refers to representatives of general circulation newspapers and news magazines sold through newsstands or mail subscriptions to the general public; representatives of news programs on radio or television stations that hold federal communications commission licenses; and news services that provide material to these news outlets.

H. “Multi-disciplinary team” or “MDT” refers to the team that meets at the facility to develop, monitor, and revise client plans for placement and services. The team includes the client and family member(s), and behavioral health, education, medical, a security representative, the juvenile probation and parole officer and a transition coordinator if assigned.

I. “Secretary” refers to the cabinet secretary of CYFD.

J. “Secure facility” refers to Camino Nuevo youth center, J. Paul Taylor center, youth diagnostic and development center or any other facility designated a secure facility by the director of juvenile justice services.

K. “Staff” refers to employee(s) of CYFD.

L. “Superintendent” refers to the chief administrator at a JJS facility.

M. “Youth care specialist” refers to juvenile justice services security employees whose primary duties include working directly with clients.
[8.14.21.7 NMAC - N, 6/1/2010]

8.14.21.8 C L I E N T PROGRAMS: Clients placed in the care and custody of juvenile justice services are programmed, housed and receive services at the most appropriate level and location available. Juvenile justice services provides social services programming that makes available a range of resources appropriate to the needs of each client including individual, group, family, drug and alcohol, and special needs treatments and interventions, depending on client needs, placement and treatment level.
[8.14.21.8 NMAC - N, 6/1/2010]

8.14.21.9 C L I E N T CLASSIFICATION: Juvenile justice services develops, maintains and makes available to clients and staff classification procedures which specify the measures used in determining the risk levels of clients, the most appropriate housing and services levels

for clients, the frequencies of reviewing client progress and the criteria for status changes.

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

8.14.21.10 S T R U C T U R E D DECISION MAKING: Each client placed in the care and custody of juvenile justice services has their respective custody level and treatment needs assessed for the risk they present to themselves, other clients, staff and the community. This assessment is based on a standard set of objective criteria developed to provide guidelines for placement in the least restrictive level of supervision available to meet their individual treatment needs.
[8.14.21.10 NMAC - N, 6/1/2010]

8.14.21.11 A D M I S S I O N , RECEPTION AND ORIENTATION: All clients received into the care and custody of juvenile justice services receive a thorough screening, assessment and orientation that includes summary admissions reports, documented program and activity schedules for their orientation period, written orientation materials, required hygienic, bedding and clothing materials and the control, safeguarding or appropriate disposition of their personal property.
[8.14.21.11 NMAC - N, 6/1/2010]

8.14.21.12 MULTIDISCIPLINARY TREATMENT TEAMS: Juvenile justice services supports a multidisciplinary treatment (MDT) team that is trained in the special needs of the population. The MDT is integral to each client’s custody, care, programming and service. Each client may receive an individualized treatment plan specific to a discipline providing a program or service, and these individualized treatment plans are merged into a plan of care, depending on individual client needs and treatment level. The role of the MDT is to assess the client’s overall plan of care, report on the client’s progress, recommend and approve program or status changes and transfers, monitor special needs or accommodations, recommend and approve special requests and assist in the planning of the client’s transition into supervised release. The MDT team’s role is accomplished by providing regular narrative documentation, written input to the monthly progress report and attendance at all MDT team meetings for their respective assigned clients.
[8.14.21.12 NMAC - N, 6/1/2010]

8.14.21.13 C A S E MANAGEMENT: Juvenile justice services provides each client a case manager responsible to provide or coordinate case management activities. These activities include assessment of client risk factors, matching client treatment needs with appropriate programs, monitoring the case

plans of individual clients, documenting the justifications for case decisions, transition planning and gathering data to evaluate program effectiveness and client program progress. The case manager also coordinates the development of the monthly progress report, filing requests for commitment extensions when necessary, and coordinating supervised release recommendations.

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

8.14.21.14 PLAN OF CARE:

Juvenile justice services develops and implements a multidisciplinary plan of care for each client that details the personalized program design for each client, includes measureable criteria of expected behavior and accomplishments and specifies the timeframe expected for each achievement.

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

8.14.21.15 THERAPEUTIC AND REHABILITATIVE PROGRAMS:

Juvenile justice services maintains quality driven therapeutic and rehabilitative programs that incorporate the best practices and advances in juvenile justice. All programs have established performance measures, maintain gender parity, have a standardized curriculum of treatment and are sufficiently evaluated to ensure data driven decision making.

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

8.14.21.16 PROGRESS MONITORING:

Each client placed in the care and custody of juvenile justice services has their respective program participation, program retention and ability to display program attributes objectively assessed as part of their rehabilitative progress. This assessment shall guide decision making on treatment levels, privileges and participation in special events or offerings.

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

8.14.21.17 CITIZEN INVOLVEMENT AND VOLUNTEERS:

Juvenile justice services is committed to a positive partnership between the service area and its volunteers. Citizen involvement and volunteering provide additional resources, enhance client programs and services, increases personal contacts for clients and broadens the community support and resources for facilities.

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

8.14.21.18 CRISIS INTERVENTION AND BEHAVIOR MANAGEMENT:

Juvenile justice services endeavors to provide a safe atmosphere in all its facilities for all clients, staff and visitors by working to minimize the impact of a crisis situation and providing specific guidelines for behavior management. To assist in meeting this goal, procedures are developed

to inform appropriate personnel of a crisis situation and to protect and promote the rights of each client, including the right to be free from physical or mental abuse.

[8.14.21.18 NMAC - Rp, 8.14.1.23 NMAC, 6/1/2010]

8.14.21.19 COMMUNITY WORK AND EDUCATION PROGRAM:

Juvenile justice services works toward the successful transition of clients from facilities back into the community. This may include a community work/education program designed to allow approved clients to attend unescorted school or employment opportunities during their commitment to a facility if beneficial to the client and the department or in the best interest of the community.

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

8.14.21.20 COMMUNITY PARTICIPATION:

Juvenile justice services works toward the successful transition of clients from facilities back into the community. This includes allowing approved clients to attend escorted activities, events, or other opportunities during their commitment to a facility if beneficial to the client and the department or in the best interest of the community.

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

8.14.21.21 PROCEDURES: The juvenile justice services director will make appropriate procedures available to the public but reserves the right to add, delete or modify procedures under the classification and programs policy without notice or comment in furtherance of the mission and goals of the department or service area.

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

HISTORY OF 8.14.21 NMAC:

Pre-NMAC History: [RESERVED]

History of Repealed Material:

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

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

8.14.1 NMAC, General Provisions, filed 12/16/2005 - Repealed effective 6/1/2010.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT JUVENILE JUSTICE DIVISION

**TITLE 8
CHAPTER 14
PART 22
RECORDS**

**SOCIAL SERVICES
JUVENILE JUSTICE
SEALING CLIENT**

8.14.22.1 ISSUING AGENCY:

Children, Youth and Families Department.

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

8.14.22.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.

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

8.14.22.3 STATUTORY

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

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

8.14.22.4 DURATION:

Permanent.

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

8.14.22.5 EFFECTIVE DATE:

June 1, 2010, unless a later date is cited at the end of a section.

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

8.14.22.6 OBJECTIVE: To establish standards and guidelines for sealing the records of juvenile justice services client.

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

8.14.22.7 DEFINITIONS:

A. "Cambiar (Change) New Mexico" refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services' staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old "correctional" model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

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

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

D. "FACTS" refers to the family automated client tracking system, CYFD's management information system.

E. "Facility" refers to a facility operated by, or on behalf of the CYFD's juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

F. "Facility records manager" or "FRM" is the person designated by the superintendent of each JJS facility to manage the files and records of JJS

clients and former clients.

G. “Files and records” means the master delinquency file of a JJS client, which includes all facility master file records and field referral records, and actions taken while in custody including but not limited to commitment papers, court orders, detainers, personal property receipts, visitor’s lists, photographs, fingerprints, types of custody, disciplinary infractions with actions taken, work assignments, program participation, program progress and other relevant case data. It does not include the separate medical, behavioral health, or education sub files.

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

I. “Juvenile probation office” or “JPO field office” refers to a CYFD department county or district office where JPO staff persons, who provide court ordered and informal supervision for clients, work from.

J. “Office of general counsel records custodian” or “OGC records custodian” is the person designated by the CYFD office of the secretary to respond to all requests from the public for information on CYFD clients, former clients, programs or services, including Inspection of Public Records Act requests.

K. “Sealing records” or “sealing” refers to the closing or restriction of access to client files and records in accordance with the provisions of the Children’s Code Section 32A-2-26, NMSA 1978.

L. “Secretary” refers to the cabinet secretary of CYFD.

M. “Staff” refers to employee(s) of CYFD.

N. “Superintendent” refers to the chief facility administrator at a JJS facility.
[8.14.22.7 NMAC - N, 6/1/2010]

8.14.22.8 INITIAL NOTICE OF SEALING ELIGIBILITY

A. Each month, the FACTS system will review all open and closed cases to identify those cases that are closed and meet the criteria for sealing in 60 days.

B. FACTS will generate a report of clients which meet the above criteria as well as individual letters to clients who meet the criteria for sealing in 60 days.

C. The report will be posted to a centralized location for JPO offices and facilities to review and research.

D. The OGC records custodian will access the report electronically and print the letters.

E. The OGC records custodian will mail the form letters to the clients identified on the list notifying them of impending sealing and giving them the opportunity to retrieve their records prior to sealing.

F. If a client who has received a notice of sealing letter requests a copy of the their records and files, the facility or field office who holds the records shall notify the OGC records custodian of the request, and upon notification from the records custodian to proceed, shall ask the client to complete a request for information form and upon receipt of a signed form, provide the records to the client free of charge. All confidentiality provisions pursuant to the Children’s Code Section 32A-2-32, NMSA 1978 are followed prior to releasing the record to the client.
[8.14.22.8 NMAC - N, 6/1/2010]

8.14.22.9 ELECTRONIC (FACTS) RECORDS SEALING

A. Each month, the FACTS system will seal the FACTS case for clients who turned 18 over 60 days ago or were already 18 and their case has been closed for 60 days.

B. Several lists are generated for notification of sealing for the courts, district attorneys, defense attorneys and the local law enforcement/referring agencies.

C. The office of general counsel will notify all parties involved in the client’s case of the record sealing, with the exception of law enforcement/referring agencies.
[8.14.22.9 NMAC - N, 6/1/2010]

8.14.22.10 SEALING NOTIFICATION - OUTSIDE ENTITIES

A. On a regular basis, the department will electronically notify the courts of CYFD records that have been sealed.

B. The department will ensure that electronic information on sealed cases will be available for other entities who are required to seal cases, including public defenders or other listed attorneys of record for the client, district attorneys, and local law enforcement agencies.
[8.14.22.10 NMAC - N, 6/1/2010]

8.14.22.11 COURT ORDERS TO SEAL

A. All court orders for sealing received by the department will be forwarded to the OGC records custodian.

B. When the OGC records custodian receives a court order for sealing, an office of general counsel attorney will review the order to ensure that it is valid and enforceable.

C. Once the order has

been reviewed and approved by OGC legal, the OGC records custodian will notify the FACTS unit, the facility and the JPO field office of the order via email, who will then follow procedure for sealing the record.
[8.14.22.11 NMAC - N, 6/1/2010]

8.14.22.12 PHYSICAL FACILITY RECORDS SEALING

A. Upon receipt of notification of the posting of the sealed spreadsheet to a designated CYFD internal computer storage drive, facility records managers will go to that drive and retrieve the list.

B. Facility records managers will seal the files and records of the names of the clients on the spreadsheet or pursuant to a court order received from OGC and forwarded to them. As soon as possible, the facility records manager will pull the client file and record, secure it in a manila envelope and mark the envelope “sealed” indicating the date sealed, the client’s FACTS #, and the destruction date. The files and records are placed in a box or file cabinet that is marked as ‘SEALED RECORDS’.

C. Upon meeting the records retention schedule, the facility records manager will deliver the sealed files and records to the state records center.
[8.14.22.12 NMAC - N, 6/1/2010]

8.14.22.13 ACCESSING SEALED RECORDS

A. Files and records that have been sealed may only be re-opened pursuant to a valid court order or for internal research and reporting purposes by designated staff in CYFD.

B. If an order is received to unseal a previously sealed file and record, OGC will review the order for legal sufficiency. Upon a determination that the order is legally sufficient, the order will be forwarded to the FACTS unit and the JPO field office or facility records manager to unseal the file and record. Once the file and record has been re-opened, OGC will be notified, the file and record delivered to OGC, and the file and record will be provided to the court that issued the order.

C. Any other request for files and records on a sealed case received at a facility or JPO field office will be forwarded to the OGC records custodian for a determination of the proper response.

D. Research and reporting includes providing information to CYFD’s data analysis unit, interstate compact for juveniles officials, department of health fatality review panels, and other entities approved by OGC.
[8.14.22.13 NMAC - N, 6/1/2010]

HISTORY OF 8.14.22 NMAC:
[RESERVED]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
JUVENILE JUSTICE DIVISION**

**TITLE 8 SOCIAL SERVICES
CHAPTER 14 JUVENILE JUSTICE
PART 23 CONFIDENTIALITY
OF CLIENT RECORDS**

8.14.23.1 ISSUING AGENCY: Children, Youth and Families Department.
[8.14.23.1 NMAC - N, 6/1/2010]

8.14.23.2 SCOPE: This rule applies to clients and staff of the juvenile justice division, also referred to as juvenile justice services, of the children, youth and families department.
[8.14.23.2 NMAC - N, 6/1/2010]

8.14.23.3 STATUTORY AUTHORITY: Sections 32A-1-1 et seq., 32A-2-1 et seq., 32A-3-1 et seq., 32A-4-1 et seq., 32A-11-1 et seq., 32A-15-1 et seq. NMSA 1978 Comp., as amended.
[8.14.23.3 NMAC - N, 6/1/2010]

8.14.23.4 DURATION: Permanent.
[8.14.23.4 NMAC - N, 6/1/2010]

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

8.14.23.6 OBJECTIVE: To establish standards and guidelines for confidentiality of records of clients under the supervision or in the custody of the department.
[8.14.23.6 NMAC - N, 6/1/2010]

8.14.23.7 DEFINITIONS:

A. “Cambiar (Change) New Mexico” refers to the name designated by the children, youth and families department (CYFD) for its juvenile justice reform initiative that focuses on rehabilitation and relationships. Clients and juvenile justice services’ staff members build one-on-one relationships with each other and learn to interact in a completely different way than the old “correctional” model. Group building activities designed to build trust and communication are key components as well as family and community involvement.

B. “Client” refers to a person who is committed to the custody of the CYFD’s juvenile justice services or who is receiving services from CYFD’s juvenile justice services.

C. “Department” refers to the New Mexico children, youth and

families department.

D. “Director” refers to the juvenile justice service director.

E. “Facility” refers to a facility operated by, or on behalf of the CYFD’s juvenile justice services, or any other facility or location designated by the juvenile justice services director to house or provide care to clients committed to the custody of CYFD.

F. “HIPAA” is the Health Insurance Portability and Accountability Act of 1996 that governs the release of health information.

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

H. “Juvenile probation office” or “JPO field office” refers to a CYFD department county or district office where JPO staff persons, who provide court ordered and informal supervision for clients, work from.

I. “Office of general counsel records custodian” or “OGC records custodian” is the person designated by the CYFD office of the secretary to respond to all requests from the public for information on CYFD clients, former clients, programs or services, including Inspection of Public Records Act requests.

J. “Secretary” refers to the cabinet secretary of CYFD.

K. “Staff” refers to employee(s) of CYFD.
[8.14.23.7 NMAC - N, 6/1/2010]

8.14.23.8 DEPARTMENTAL CLIENT RECORDS: Records held by the department that concern juvenile justice services clients may be disclosed to employees within the department pursuant to the informed consent of the client who is the subject of the records and according to federal or state laws, rules, and regulations. Departmental employees shall maintain the confidentiality of the information disclosed, shall adhere to all state and federal laws, rules and regulations and the departmental code of conduct, and shall not release the information outside CYFD operations and their responsibilities for the identification, placement or management of youth involved in the juvenile justice system. Anyone who intentionally or otherwise unlawfully releases confidential information is subject to disciplinary action and/or criminal prosecution.
[8.14.23.8 NMAC - N, 6/1/2010]

8.14.23.9 DELINQUENCY RECORDS REQUESTS: Juvenile justice services client records are confidential and

can only be disclosed pursuant to a valid court order, except to those entities specifically entitled to access under the New Mexico Children’s Code Delinquency Act. Any time a request for juvenile justice services client records is received by a facility, JPO field office, or any other departmental entity, the request is immediately forwarded to the OGC records custodian.

A. Once received by the OGC records custodian, the request is forwarded to an assistant general counsel in the office of general counsel for review. If the assistant general counsel approves the request, the OGC records custodian corresponds with the requester and asks them to complete and return a juvenile justice services request for disclosure of confidential information form and any required HIPAA or other release forms, as below.

B. If the forms are returned, the OGC records custodian requests copies of the client records from the appropriate facility for review by the OGC assistant general counsel. The OGC assistant general counsel is responsible for ensuring that records are released only as allowed by the Children’s Code Delinquency Act, including types of records, the manner of release, and the person(s) released to.

C. When allowing access to an authorized entity, all attorney-client privileged information and all internal records of the department found within client records, including case narrative notes, email correspondence, and other internal correspondence, shall be stricken or otherwise not included in the disclosure.

D. Juvenile justice services records or information shall not be released pursuant to a subpoena, because subpoenas do not reflect a determination by a children’s court judge that the requesting party has a legitimate interest in the case or the work of the court, as required by the New Mexico Children’s Code Delinquency Act.
[8.14.23.9 NMAC - N, 6/1/2010]

8.14.23.10 REQUESTS FOR MEDICAL OR BEHAVIORAL HEALTH RECORDS: When a request for medical or behavioral health records is received by the OGC records custodian, it must be accompanied by a current and valid signed HIPAA release. An access to records request form is also required if the disclosure is to be made to the person who is the subject of the records, signed by the person making the request. These forms are in addition to the request for disclosure of confidential information form required for all records requests. Juvenile justice services clients over fourteen years of age must sign their own release forms for behavioral health records, pursuant to the New Mexico mental health and developmental disabilities code.

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

8.14.23.11 PROCEDURES: The juvenile justice services director will make appropriate procedures available to the public but reserves the right to add, delete or modify procedures under the confidentiality of client records policy without notice or comment in furtherance of the mission and goals of the department or service area.

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

HISTORY OF 8.14.23 NMAC:
[RESERVED]

NEW MEXICO DEPARTMENT OF GAME AND FISH

18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, filed December 14, 2006 by the Off-Highway Motor Vehicle Safety Board is hereby repealed effective May 28, 2010. It is replaced by 18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, effective May 28, 2010, now filed by Department of Game and Fish.

NEW MEXICO DEPARTMENT OF GAME AND FISH

TITLE 18 TRANSPORTATION AND HIGHWAYS

CHAPTER 15 OFF - HIGHWAY MOTOR VEHICLE SAFETY

PART 3 OFF - HIGHWAY MOTOR VEHICLE SAFETY STANDARDS

18.15.3.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[18.15.3.1 NMAC - Rp, 18.15.3.1 NMAC, 5-28-10]

18.15.3.2 SCOPE: This rule prescribes safety standards, registration, and safety permit requirements for all persons seeking to operate an off-highway motor vehicle and applies to all persons seeking to operate an off-highway motor vehicle safety training organization, or serve as an off-highway motor vehicle instructor or guide in New Mexico.

[18.15.3.2 NMAC - Rp, 18.15.3.2 NMAC, 5-28-10]

18.15.3.3 STATUTORY AUTHORITY: NMSA 1978, Sections 66-3-1001 through 66-3-1020.

[18.15.3.3 NMAC - Rp, 18-15-3-3 NMAC, 5-28-10]

18.15.3.4 DURATION:
Permanent.

[18.15.3.4 NMAC - Rp, 18-15-3-4 NMAC, 5-28-10]

18.15.3.5 EFFECTIVE DATE:
May 28, 2010, unless a later date is cited at the end of a section.

[18.15.3.5 NMAC - Rp, 18-15-3-5 NMAC, 5-28-10]

18.15.3.6 OBJECTIVE: The purpose of this rule is to provide minimum and uniform standards for the registration, permitting and safe operation of off-highway motor vehicles and for the certification of off-highway motor vehicle safety training organizations, instructors and guides, and matters incident thereto.

[18.15.3.6 NMAC - Rp, 18-15-3-6 NMAC, 5-28-10]

18.15.3.7 DEFINITIONS:

A. "AST" means the ATV safety institute, a division of the specialty vehicle institute of America.

B. "Board" means the off-highway motor vehicle advisory board.

C. "Certificate" means one of the following documents issued by the department on a non-exclusive basis authorizing a person to:

(1) "safety training "permit": operate an off-highway motor vehicle if under 18 years of age or;

(2) "instructor certificate": serve as an off-highway motor vehicle safety training organization, a lead instructor, guide or junior instructor.

D. "CPSC" means the consumer product safety commission.

E. "Department" means the New Mexico department of game and fish.

F. "Designee" means a person authorized to perform certain specified duties on behalf of the department.

G. "Director" means the director of the New Mexico department of game and fish.

H. "Division" means the motor vehicle division of the New Mexico taxation and revenue department.

I. "Enrolled" means that a student has attended the first day of a scheduled safety training course and will continue until the course is completed.

J. "Extension site" means a location other than the main off-highway motor vehicle safety training organization's training site where a certified organization offers OHV safety training courses.

K. "Guide" means a person who is certified as a lead instructor by the department and who guides or directs an off-highway vehicle organized tour.

L. "Implied Consent Act"
means Sections 66-8-105 through 66-8-112, NMSA 1978.

M. "Junior instructor"
means a person over the age of eighteen (18) but less than twenty-one (21) years of age certified by the department pursuant to the instructor qualifications and standards criteria of these rules as meeting the minimum qualifications to teach and evaluate a student in a department certified off-highway motor vehicle safety training course under the direct supervision of a lead instructor.

N. "Lead instructor"
means a person at least twenty-one (21) years of age certified by the department pursuant to the instructor qualifications and standards criteria of these rules as meeting the minimum qualifications to teach and evaluate a student in a department certified off-highway motor vehicle safety training course.

O. "Moral turpitude"
means behavior that gravely violates the accepted moral standards of the community.

P. "MSF" means the motorcycle safety foundation.

Q. "Off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road as defined in statute or as designated by the director.

R. "Off-highway motor vehicle safety training organization" (also referred to in these rules as "OHV safety training organization" or "organization") means a business, certified by the department as qualified to provide safety training.

S. "Person" means an individual, firm, partnership, association, corporation, limited liability company, or other legal entity.

T. "Proctored exam"
means an exam monitored by a lead instructor or a junior instructor under the direct supervision of a lead instructor.

U. "Revocation or revoked" means the involuntary permanent termination of a certificate by the board for cause.

V. "Staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation.

W. "Student" means a person who has enrolled in an OHV safety training course certified by the board.

X. "Suspended or suspension" means the involuntary permanent termination of a certificate by the board for cause.

Y. "Trail etiquette" means the correct and appropriate interaction between all types of trail users; respect for and adherence to rules and laws governing use on public and private land; respect for the environment and avoidance of causing any adverse impacts to the environment;

not littering and making sure campfires are extinguished.

[18.15.3.7 NMAC - Rp, 18.15.3.7 NMAC, 5-28-10]

18.15.3.8 OPERATION REQUIREMENTS:

A. License not required:

Drivers of off-highway motor vehicles are not required to be licensed.

B. Prohibitions:

A person shall not operate an off-highway motor vehicle:

(1) in a careless, reckless or negligent manner so as to endanger the person or property of another;

(2) while under the influence of intoxicating liquor or drugs as provided by Section 66-8-102 NMSA 1978;

(3) while in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;

(5) on or within an earthen tank or other structure meant to water livestock or wildlife, unless the off-highway motor vehicle is on a route designated by the landowner or land management agency as an off-highway motor vehicle route;

(6) in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;

(7) in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling, unless the person operates the vehicle on a closed course or track;

(8) unless in possession of the person's registration certificate or nonresident permit;

(9) unless the vehicle with an internal combustion engine is equipped with a spark arrester approved by the United States forest service; provided that a snowmobile is exempt from this provision;

(10) when conditions such as darkness limit visibility to five hundred feet (500) or less, unless the vehicle is equipped with:

(a) one or more headlights of sufficient candlepower to light objects at a distance of one hundred-fifty feet (150); and

(b) at least one taillight of sufficient intensity to exhibit a red or amber light at a distance of two hundred feet (200') under normal atmospheric conditions;

(11) that produces noise that exceeds ninety-six (96) decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287;

(12) where off-highway motor vehicle traffic is prohibited under local,

state, or federal rules or regulations.

C. Requirements for minors: A person under the age of eighteen (18) shall not operate an off-highway motor vehicle:

(1) or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear that meets the standards established by the department in these rules;

(2) without an off-highway motor vehicle safety permit; or

(3) while carrying a passenger.

D. Visual supervision: A person under the age of eighteen (18) but at least ten (10) years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of eighteen (18) who has a valid driver's license. This rule does not apply to a person who is at least:

(1) thirteen (13) years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) fifteen (15) years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

E. Minors under 10 years of age: A person under the age of ten (10) shall not operate an off-highway motor vehicle unless:

(1) the all-terrain vehicle is an age-appropriate size-fit vehicle established by rule of the department; and

(2) the person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the department.

F. Organized tour exception: The requirements of Subsections D and E of this section do not apply to a person who is part of an organized tour under the guidance or direction of a guide certified by the department under these rules.

G. Noise standard: An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds ninety-six (96) decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition.

H. Prohibited areas of operation. A person shall not operate an off-highway motor vehicle on any:

(1) limited access highway or freeway at any time; or

(2) any paved street or highway except as provided in Subsection B of Section 66-3-1011 NMSA 1978.

I. Public lands restrictions. A person shall not operate

an off-highway motor vehicle on state game commission owned, controlled, or administered land or on land owned, controlled, or administered by the state parks division of the energy, minerals and natural resources department except in compliance with Subsections C and D of Section 66-3-1011 NMSA 1978.

J. Public highway restrictions: Off-highway motor vehicles may only be driven adjacent to a highway for the purpose of gaining access to or returning from areas designed for the operation of off-highway vehicles by the shortest possible route and when no other route is available or when the area adjacent to a highway is being used as a staging area. Such use must occur between the highway and fencing that separates the highway from private or public lands, and the operator of the off-highway motor vehicle shall yield to all vehicles entering or exiting the highway, in a manner that does not interfere with highway traffic. When snow conditions permit, an off-highway motor vehicle may be operated on the right-hand side of a highway, parallel, but not closer than ten feet (10) to the inside of the plow bank.

K. Accidents and accident reports: The driver of an off-highway motor vehicle involved in an accident resulting in injuries to or the death of a person or resulting in damage to public or private property to the extent of five hundred dollars (\$500) or more shall immediately notify a law enforcement agency of the accident and the facts relating to the accident. If the driver is under the age of eighteen, the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident.

[18.15.3.8 NMAC - Rp, 18.15.3.8 NMAC, 5-28-10]

18.15.3.9 EQUIPMENT REQUIREMENTS:

A. Safety helmets: All off-highway motor vehicle operators and passengers under the age of eighteen (18) shall wear safety helmets that comply with the safety standards of Title 49 Transportation, Chapter V - National Highway Traffic Safety Administration, Department of Transportation, Part 571-Federal Motor Vehicle Safety Standards, Subpart B-Federal Motor Vehicle Safety Standards, Standard No. 218, Motorcycle helmets of the Code of Federal Regulations (49CFR571.218). A helmet exhibiting the symbol DOT in conformance with 49CFR571.218 shall constitute prima facie evidence of compliance with this standard.

B. Eye protection: Unless the off-highway motor vehicle has a protective windscreen, all off-highway motor vehicle operators and passengers under the age of eighteen (18) must wear eye

protection that meets or exceeds the Vehicle Equipment Safety Standards Regulations VESC-8 (Minimum Requirements for Motorcycles, Eye Protection Section 11-1306(e) or the American National Standards Institute (ANSI) Standard Z87.1 and more generally known as safety glasses or safety goggles. Additionally, the protective eyewear must be free of scratches, give a clear view to both sides and be fastened securely.

C. Age appropriate size-fit: Standards governing the relationship between the engine displacement level (in cubic centimeters, or cc.) of an all-terrain vehicle (ATV) and the minimum age an operator must attain before he may operate an ATV with higher than minimum engine displacement levels, combined with objective measurements of how a rider physically fits on an ATV and can operate basic equipment features, are called "age appropriate size-fit" standards.

(1) No person under six (6) years of age shall operate an all-terrain vehicle on public land.

(2) Operators under the age of ten (10) shall not operate an ATV with an engine size greater than 100cc and shall comply with the physical fit standards set forth below in Subsection D of this section.

(3) Operators from ages ten (10) through fifteen (15) shall not operate an ATV with an engine size greater than 250cc and shall comply with the physical fit standards set forth below in Subsection D of this section.

(4) Notwithstanding Paragraph (3) of this subsection, operators who are fourteen (14) or fifteen (15) years of age and who possess a valid driver's license may operate an ATV with an engine size not greater than 450 cc.

(5) Operators at least sixteen (16) years of age may operate an ATV with an engine size greater than 250cc.

D. Physical fit standards: Unless the relationship between an operator and the ATV being operated complies with the following standards, there is a violation of the age appropriate size-fit standards of these rules, regardless of whether the operator is in compliance with the engine size standards of Subsection C immediately preceding.

(1) Clearance between ATV seat and inseam while standing up on foot pegs: The intent for requiring a clearance is two-fold: the first is to permit the rider to stand up and absorb shocks through the legs while traversing rough terrain; the second is to minimize the possibility of the rider being struck by the seat and catapulted over the handle bars. Three to six inches should be a minimum clearance. The maximum will be controlled by the reference point below.

(2) Upper legs: The upper portion

of the leg, roughly from the top of the knee to the hip (or the lap if sitting in a chair) should be approximately horizontal. A little above or below the horizontal is not a violation of this standard, but gross departures (knees significantly below or above the hips) shall warrant further inquiry. Knees that are significantly above the hips and which contact the handlebars in both directions when they are turned constitute a violation of this standard.

(3) Foot length: With the heel of the right shoe locked against the footpeg or in the proper position on the running board, the toe should be able to depress the foot brake with a simple downward rotation of the foot. Contact with engine or exhaust protrusions should be examined. The rider should be able to operate the brakes consistently without hesitation. The same principle applies to the left side of the ATV where the gearshift is located.

(4) Grip reach: With the rider in the normal seated position (not leaning forward) and the hands on the handlebars, the elbows should have a distinct angle between the upper arm and the forearm. If the elbows are straight out, the rider has no ability to turn the handlebars. If the elbows are less than right angles, the rider is too large for the ATV and steering is difficult possibly throwing the rider off balance.

(5) Throttle reach: With the right hand in the normal operating position, the thumb must easily operate the throttle. The rider must be able to turn the handlebars to both the extreme left and extreme right position without any interference with easy operation.

(6) Brake reach: With the hands in the normal operating position and the fingers straight out, the first joint (from the tip) of the middle finger should extend beyond the brake lever. If not, the hand is too small to effectively grasp the lever in an emergency. The thumb must also reach the engine stop switch. The rider should be able to squeeze the brake lever comfortably and repeatedly. [18.15.3.9 NMAC - Rp, 18.15.3.9 NMAC, 5-28-10]

18.15.3.10 MINIMUM CRITERIA FOR APPROVAL AND CERTIFICATION OF OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING ORGANIZATIONS AND INSTRUCTORS/GUIDES:

A. ASI standard adopted. The department shall approve and certify all motor vehicle safety training organizations for ATV's whose applications establish that they will:

(1) utilize ASI's instructional materials, e-course, or a materially equivalent curriculum; and

(2) comply with the inclusion of New Mexico specific curriculum with

respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, laws and prohibitions against operating off-highway motor vehicles under the influence of alcohol or drugs.

B. MSF standard adopted. The department shall approve and certify all motor vehicle safety training organization for off-highway motorcycles whose applications establish that they will:

(1) utilize the MSF "dirt bike school" instructional materials, e-course, or a materially equivalent on-line curriculum; and

(2) comply with the inclusion of New Mexico specific curriculum with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, laws and prohibitions against operating off-highway motor vehicles under the influence of alcohol or drugs.

C. Snowmobile standard. [Reserved]

D. Out of state safety permits. A current off-highway motor vehicle safety permit issued by another state to a person under the age of eighteen (18), or an ASI, MSF or equivalent certificate as determined by the department evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an off-highway motor vehicle safety training course before operating an off-highway motor vehicle in New Mexico. New Mexico residents under the age of eighteen (18) must successfully complete an off-highway motor vehicle safety course that complies with these rules.

E. Grandfathered safety permits. Safety certificates issued prior to January 1, 2007, by ASI, MSF, 4-H or equivalent certificates as determined by the department evidencing completion of an OHV safety training course, shall satisfy the requirement for completion of an off-highway motor vehicle safety training course before operating an off-highway motor vehicle in New Mexico.

[18.15.3.10 NMAC - Rp, 18.15.3.10 NMAC, 5-28-10]

18.15.3.11 ON-LINE SAFETY TRAINING:

A. Hours requirement. An OHV safety training program shall provide at least 4 hours of curriculum on safe and responsible off-highway vehicle operation. Upon successful completion of the curriculum and final exam, a safety permit will be issue. A student must correctly answer at least seventy percent (70%) of the questions to pass the final exam and receive a permit

B. Curriculum requirement: Only the curriculum, chapter

review material and final examination questions approved by the department may be used. An on-line safety training curriculum must include lessons about:

- (1) safety awareness.
- (2) New Mexico operations requirements as required by 18.15.3.8 NMAC of these rules;
- (3) safety equipment requirements as required by 18.15.3.9 of these rules;
- (4) age-appropriate size-fit use of off-highway motor vehicles as outlined by Subsection C and D of 18.15.3.8 NMAC of these rules;
- (5) responsible use of off-highway motor vehicles with respect to environmental considerations, private property restrictions, agricultural and rural lifestyles and cultural considerations, and restrictions against operating off-highway motor vehicles under the influence of alcohol or drugs;
- (6) respecting ATV's: safety awareness; preparation to ride; controls and equipment checks; starting procedures; posture, starting out, shifting gears, braking and parking; turning; quick stops and swerving; riding strategies; riding over obstacles; riding on hills; and safe riding practices; and
- (7) trail etiquette: how to deal with fences, land use ethic.

C. Other requirement: A safety training organization shall provide the department with a monthly (or as requested) report of students who successfully completed the on-line safety training course. The information should include the students first and last name, middle initial, date of birth, last four of social security number, and students home telephone number, date training was completed, the students final grade and total time for completion of the training course. This information shall remain confidential by the safety training organization and the department and for sole purpose of record keeping.
[18.15.3.11 NMAC - N, 5-28-10]

HISTORY OF 18.15.3 NMAC:

History of Repealed Material:

18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, filed December 14, 2006 by the Off-Highway Motor Vehicle Safety Board - Repealed effective May 28, 2010 and replaced by 18.15.3 NMAC, Off-Highway Motor Vehicle Safety Standards, effective May 28, 2010, filed by Department of Game and Fish.

NEW MEXICO HUMAN SERVICES DEPARTMENT

MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.200.430 NMAC Section 16, effective June 1, 2010.

8.200.430.16 RECIPIENT FINANCIAL RESPONSIBILITIES: Providers who participate in medicaid agree to accept the amount paid as payment in full, see 42 CFR 447.15, with the exception of co-payment amounts required in certain medicaid categories. Other than the co-payments, a provider cannot bill a recipient for any unpaid portion of the bill or for a claim that is not paid because of provider administrative error or failure of multiple providers to communicate eligibility information. Native Americans are exempt from co-payment requirements.

A. Failure to follow managed care policies: A recipient must be aware of the physicians, pharmacies, hospitals, and another provider who participate in their health maintenance organization (HMO) or other managed care plan. A recipient is responsible for payment for services if he uses a provider who is not a participant in his plan or if he receives any services without complying with the rules, policies, and procedures of the plan.

B. Denied emergency room claims: A recipient is responsible for payment of a hospital outpatient emergency room claim if a determination is made by MAD or its designee that an emergency did not exist at the time the service was furnished.

(1) A provider can bill the recipient directly for the denied emergency room charge.

(2) The recipient cannot be billed for denied ancillary services, such as laboratory and radiology services.

C. Other recipient payment responsibilities: If all the following conditions are met before a service is furnished, a recipient can be billed directly by a provider for services and is liable for payment:

(1) the recipient is advised by a provider that the particular service is not covered by medicaid or are advised by a provider that he is not a medicaid provider;

(2) the recipient is informed by a provider of the necessity, options, and charges for the services and the option of going to another provider who is a medicaid provider; and

(3) the recipient agrees in writing to have the service provided with full knowledge that he is financially responsible for the payment.

D. Co-payment responsibility for [SCHHP] CHIP and WDI recipients: It is the recipient's responsibility to pay the co-payment to the provider. Children eligible for category 032 with family income between 185-235[%] percent of poverty ([SCHHP]) (CHIP) and working disabled individuals (WDI), category 043, will have co-payment requirements as follows:

(1) WDI

(a) \$7 per outpatient physician visit, other practitioner visit, clinic visit, urgent care visit, outpatient therapy session, or behavioral health session;

(b) \$7 per dental visit;

(c) \$20 per emergency room visit;

(d) \$30 per inpatient hospital admission;

(e) \$5 per prescription, applies to prescription and non-prescription drug items.

(2) [SCHHP] CHIP

(a) \$5 per outpatient physician visit, other practitioner visit, clinic visit, urgent care visit, outpatient therapy session, or behavioral health session;

(b) \$5 per dental visit;

(c) \$15 per emergency room visit;

- (d) \$25 per inpatient hospital admission;
- (e) \$2 per prescription, applies to prescription and non-prescription drug items.

E. **Co-payment exclusions:** Certain services and populations are exempt from co-payment responsibilities.

- (1) Preventive, prenatal care services and contraceptive management services are exempt from the copayment requirement.
- (2) Services provided at Indian health service facilities, by urban Indian providers and by tribal 638s are also exempt from the co-payment requirement.

(3) There is no co-payment required during presumptive eligibility or retroactive eligibility periods.

(4) There is no co-payment required for services provided to Native Americans.

F. **Co-payment maximum for [SCHIP] CHIP and WDI:** It is the responsibility of the family to track and total the co-payments paid. Once the family yearly maximum amount for [SCHIP] CHIP and WDI recipients has been paid by the family via co-payments on medicaid covered services, the recipient must notify the medical assistance division. Verification must be provided to the medical assistance division that the co-payment maximum for [SCHIP] CHIP and WDI recipients has been paid. The first month that co-payments will no longer be required by the [SCHIP] CHIP and WDI recipient is the month following the month in which it has been verified by the medical assistance division that the maximum amount has been met. If the determination is made after the 25th of the month, the change is made effective the second month after the request. No retroactive eligibility for the "met co-payment maximum" criteria is allowed. Subsequent to establishing that the co-payment maximum amount has been met, the WDI recipient and the family of [SCHIP] CHIP recipients is not responsible for payment of co-payments for the remainder of that calendar year.

(1) Co-payment maximum amounts for [SCHIP] CHIP recipients are calculated at initial determination and re-determination of eligibility by ISD. The co-payment maximum amount calculated at the re-determination is effective for the following year.

(2) If the family income decreases to below 185[%] percent of federal income poverty guidelines, the family may report that change and have the children changed to category 032 eligibility up to 185[%] percent of poverty, with no co-payment requirements. The change is effective in the month following the month of such determination. If the determination is made after the 25th of the month, the effective date of the change is the second month after such verification.

(3) The family maximum co-payment amounts for [SCHIP] CHIP recipients are as follows:

- (a) families with income between 185-200[%] percent FPL- maximum is [3%] three percent
- (b) families with income between 201-215[%] percent FPL- maximum is [4%] four percent
- (c) families with income between 216-235[%] percent FPL- maximum is [5%] five percent

(4) The co-payment maximum varies depending on the recipient's earned and unearned income. Once the recipient has reached his co-payment maximum on covered medicaid services, co-payments cease for the rest of that calendar year, only after the recipient has fulfilled the required steps. For [SCHIP] CHIP, see Paragraph (5) of Subsection A of Section 16 of 8.200.430 NMAC; for WDI, see Section 9 of 8.243.600 NMAC.

(5) Co-payment maximum amounts for WDI recipients are calculated at initial determination, based on the income received the first month of eligibility, and every [twelve] 12 months thereafter. The co-payment maximum amount calculated at the initial determination is prorated for the rest of the calendar year and is also determined for the following calendar year. At each annual periodic review, the co-payment maximum will be calculated for the following calendar year.

(a) Recipients with earned and unearned income below 100[%] percent FPL - maximum is \$600.

(b) Recipients with earned and unearned income between 100-250[%] percent FPL - maximum is \$1500.

G. **Co-payment responsibility for state coverage insurance (SCI) recipients:** It is the recipient's responsibility to pay the co-payment to the provider. Adults eligible for category 062 with family income from 0-200[%] percent of federal poverty limit will have co-payment responsibility as follows:

| Service | Co-pay at 0% - 100% FPL- 062 | Co-pay at 101% - 150% FPL- 062 | Co-pay at 151% - 200% FPL-062 |
|---|------------------------------------|--|--|
| Physician/provider visits (no co-pay for preventive services-see below) | \$0 | \$5 | \$7 |
| Pre/post natal care | \$0 | \$0 | \$0 |
| Preventive services | \$0 | \$0 | \$0 |
| Hospital inpatient medical/surgical | \$0/day | \$25 per admission | \$30 per admission |
| Hospital inpatient maternity | \$0/day | \$25 per admission | \$30 per admission |
| Hospital outpatient surgery/procedures | \$0 | \$5 | \$7 |
| Home health | \$0 | \$5 | \$7 |
| PT, OT & SLP | \$0 | \$5 | \$7 |
| Diagnostics (excluding routine lab and x-ray) | \$0 (included in office visit) | \$0 (included in office visit) | \$0 (included in office visit) |
| DME/supplies | \$0 | \$5 | \$7 |
| Emergency services | \$0 | \$15 per visit, waived if admitted to a hospital within 24 hours | \$20 per visit, waived if admitted to a hospital within 24 hours |
| Urgent care | \$0 | \$5 | \$7 |

| | | | |
|---|---|----------------------|----------------------|
| Prescription drugs: generic name brand | \$3 per prescription | \$3 per prescription | \$3 per prescription |
| Behavioral health and substance abuse: outpatient office visit and outpatient substance abuse treatment inpatient behavioral health and inpatient detox | \$0 \$0 | \$5 \$25 | \$7 \$30 |
| Limits on out-of-pocket expenses | Out of pocket charges for all participants will be limited to [5%] <u>five percent</u> of countable family income per benefit year. [Pharmacy out-of-pocket charges for all participants will be limited to \$12 per month.] | | |

H. **Co-payment exclusions for SCI recipients:** Certain services and populations are exempt from co-payment responsibilities.

(1) Prenatal care services are exempt from the co-payment requirement.

(2) Services provided at Indian health service facilities, by urban Indian providers and by tribal 638s are also exempt from the co-payment requirement.

(3) There is no co-payment required for services provided to Native Americans.

I. **Cost-sharing maximum for SCI recipients:** It is the responsibility of the client to track and total the co-payments and the employee portion of the premiums paid. If required, the employer portion of the premium is not counted toward the cost-sharing maximum and must be paid by (or on behalf of) the individual enrollee each month regardless of income category or cost-sharing maximum status. Once the yearly maximum amount for SCI recipients has been paid by the individual via co-payments and the employee portion of the premiums on covered services, the recipient must notify the managed care organization (MCO) in which he or she is enrolled. It is the client's responsibility to notify the MCO and provide verification to the MCO that the cost-sharing maximum for SCI has been paid. The first month that cost-sharing will no longer be required by the SCI recipient is the month following the month in which it has been verified by the MCO that the maximum amount has been met. If the determination is made after the 24th of the month, the change is made effective the second month after verification. No retroactive eligibility for the "met cost-sharing maximum" criteria is allowed. Subsequent to establishing that the cost-sharing maximum amount has been met, the SCI recipient is not responsible for payment of co-payments and employee portion of the premiums for the remainder of that benefit year. Co-payment maximum amounts for SCI recipients are calculated at initial determination and re-determination of eligibility by ISD at [5%] five percent of the annual countable income. The co-payment maximum amount calculated at the re-determination is effective for the following benefit year. See also 8.262.600.9 NMAC.

J. Premium payments, when required, must be paid in full each month, even if cost-sharing maximum has been reached and there is an overpayment. No partial payments of premiums or co-payments will be allowed. No premiums or co-payments will be refunded. [2-1-95, 3-1-99, 7-1-00; 8.200.430.16 NMAC - Rn, 8 NMAC 4.MAD.437 & A, 1-1-01; A, 1-1-02; A, 6-1-04; A, 6-15-04; A, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.262.400 NMAC, Sections 3, 4, 7 and 17, effective June 1, 2010.

8.262.400.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2 authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.
[8.262.400.3 NMAC - N, 7-1-05; A, 6-1-10]

8.262.400.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver[;] and the medicaid demonstration waiver and subject to availability of funds.
[8.262.400.4 NMAC - N, 7-1-05; A, 6-1-10]

8.262.400.7 DEFINITIONS:

A. **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or a failure to provide a service in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.

B. **Authorized representative:** An individual or entity for whom or for which the applicant has signed a release of confidentiality and to whom notices will be sent.

C. **Benefits:** SCI-covered services provided by the SCI-participating MCO and for which payment is included in the capitation rate, as defined in 8.262.600 NMAC.

D. **Capitation:** A per-member, monthly payment to an MCO that covers contracted services and is paid in advance of service delivery. It is a set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed in units of "per member per month" (PMPM).

E. **Catastrophic coverage:** Insurance coverage for specific catastrophic events, such as death, fire, flood, and some medical conditions.

F. **Category:** A designation of the automated eligibility system. The assigned category is applicable for a period of 12 consecutive months regardless of changes in income or family status, subject to change by request from the recipient.

G. **Childless adult population:** Non-pregnant, childless adults, ages 19 through 64 years, with household income below 200 percent of the federal poverty level, who do not otherwise qualify for medicaid or medicare.

[G-] H. **Cost-sharing:** Premiums and copayments owed by the member based on income group category.

[H-] I. **Cost-sharing maximum:** The cost sharing maximum is determined during the initial eligibility determination and recertification process. The cost sharing maximum amount established at the point of eligibility determination for the benefit year represents an amount equal to five percent of the program participant's countable income.

[I-] J. **Coverage:** Coverage month is a month where all eligibility and enrollment requirements including premium payment, if applicable, are met.

[J-] K. **Eligibility:** The process of establishing that SCI residency, citizenship or alien status, health insurance

coverage, income, living arrangement, and age requirements are met, as defined in this part and 8.262.500 NMAC.

[K:] L. **Employer:** An employer with fifty or fewer eligible employees on a full or part-time basis.

[L:] M. **Employer group:** A group of employees employed by an eligible employer who receives SCI benefits through the employer.

[M:] N. **Employee:** A person employed by an employer who participates in the SCI health benefit plan.

[N:] O. **Employer enrollment period:** Employer's standard practice for new and annual health insurance enrollment.

[O:] P. **Enrollment:** The process of enrolling eligible members in an MCO for purposes of management and coordination of health care delivery. The process of enrolling members either by the employer or individually in an available SCI-participating MCO for purposes of health care coverage. Enrollment encompasses selection of an MCO, notification of the selection to the MCO, and timely payment of premiums, as required, as designed by the MCO.

[P:] Q. **Eligibility letter:** A notice of SCI eligibility and the potential for SCI coverage contingent upon enrollment with a SCI participating MCO. The letter will include start and end dates of eligibility, the requirement to enroll before coverage will begin, and the need to enroll 90 days subsequent to the month of issuance of the enrollment letter. The letter will also notify the member of the federal poverty level subcategory and of the responsibility to track out-of-pocket expenditures for SCI cost sharing.

[Q:] R. **Fifth degree of relationship:** The following relatives are within the fifth degree of relationship to a dependent child:

- (1) father (biological or adopted);
- (2) mother (biological or adopted);
- (3) grandfather, great grandfather, great-great-grandfather, great-great-great-grandfather;
- (4) grandmother, great grandmother, great-great-grandmother, great-great-great-grandmother;
- (5) spouse of child's parent (stepparent);
- (6) spouse of child's grandparent, great grandparent, great-great-grandparent, great-great-great-grandparent (step-grandparent);
- (7) brother, half-brother, brother-in-law, stepbrother;
- (8) sister, half-sister, sister-in-law, stepsister;
- (9) uncle of the whole or half blood, uncle-in-law, great uncle, great-great uncle;
- (10) aunt of the whole or half-

blood, aunt-in-law, great aunt, great-great aunt;

(11) first cousin and spouse of first cousin;

(12) son or daughter of first cousin (first cousin once removed) and spouse;

(13) son or daughter of great aunt or great uncle (first cousin once removed) and spouse; or

(14) nephew/niece and spouses;

(15) **Note:** A second cousin is a child of a first cousin once removed or child of a child of a great aunt or uncle and is not within the fifth degree of relationship.

[R:] S. **Fiscal agent (medicaid fiscal agent):** An entity contracted by the state medicaid program to sort and process eligibility information as well as pay fee-for-service and capitation claims.

[S:] T. **Grievance (member):** Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO or its operations that is not an MCO action.

[T:] U. **Group of one:** Individuals who enroll without an employer group but report self-employment.

[U:] V. **Health insurance:** Insurance against loss by sickness or bodily injury. The generic term for any forms of insurance that provides lump sum or periodic payments in the event of bodily injury, sickness, or disease, and medical expense. This includes but is not exclusive of: medicare part A or medicare part B, medicaid, CHAMPUS, and other forms of government health coverage.

[V:] W. **Hearing or administrative hearing:** An evidentiary hearing that is conducted so that evidence may be presented.

[W:] X. **Income groupings-0-100 percent, 101-150 percent, and 151-200 percent of federal poverty levels:** These income groupings define the premium, copayment, and cost-sharing maximums for SCI cost-sharing purposes.

[X:] Y. **Individual:** A person who enrolls in SCI who is not a member of an eligible employer group and pays the premium amount designated for both the employee and employer share, if applicable based on household income, [~~and—the employer share;~~] or has that amount paid on his/her behalf by another entity.

[Y:] Z. **Individual health plan:** Health insurance coverage purchased by an individual from an insurer offering individual healthcare benefit policies.

[Z:] AA. **Managed care organization (MCO):** An organization licensed or authorized through an agreement among state entities to manage and coordinate and receive payment at actuarially sound payment rates for the delivery of specified services to enrolled members from a certain geographic area.

[AA:] BB. **Member:** An eligible member enrolled in an MCO.

[BB:] CC. **Member month:** A calendar month in which a member is enrolled in an MCO.

[CC:] DD. **Notice:** A written statement that includes what action is being taken, the reasons for the intended action, the specific regulation that requires the action, and an explanation of the circumstances under which the service may be continued if a hearing is requested.

EE. **Parent population:** Uninsured parents, ages 19 through 64, of medicaid and CHIP-eligible children, who are not otherwise eligible for medicaid or medicare, with household income below 200 percent of the federal poverty level.

[DD:] FF. **Parental or custodial relative status:** The state of having a dependent child under the age of 18 who is the son, daughter, or relative within the fifth degree of relationship living in the household and under the care and control of the individual.

[EE:] GG. **Premium-employer:** A specific monthly payment payable to the MCO by employers who enroll their employees in SCI at a rate set by the department. This amount may be paid by an individual member not in an employer group in order to participate in SCI. Subject to available funding, the state may allocate funds to assist certain eligible individuals with payment of the employer premium contribution and will notify eligible individuals of such assistance. Premiums cannot be refunded.

[FF:] HH. **Premium-employee:** A specific monthly payment payable to the MCO calculated by the department based on a subcategory of eligibility representing an income grouping. 062-0-100 percent FPL, 062-101-150 percent FPL, 062-151-200 percent FPL. Premiums and copayments cannot be refunded.

[GG:] II. **Qualifying event:** Termination of employment for any reason; loss of eligibility for health insurance benefits due to reduction in work hours; loss of health insurance coverage due to death, divorce or legal separation from spouse, loss of dependent status; moving to or from another state.

[HH:] JJ. **SCI (state coverage insurance):** The New Mexico health care program implemented under the authority of the health insurance flexibility and accountability (HIFA) waiver and a section 1115 medicaid demonstration waiver granted to the state by the centers for medicare and medicaid services (CMS).

[H:] KK. **Shoebox method:** The method under which an SCI member is responsible for tracking, and submission of a request for verification of total expenditures for himself, based on SCI employee

premiums and copayments for purposes of establishing that the cost-sharing maximum amount has been met.

[H:] LL. Voluntary drop:

The act of voluntarily terminating or discontinuing health insurance coverage.

[8.262.400.7 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07; A, 6-1-08; A, 7-1-09; A, 6-1-10]

8.262.400.17 SPECIAL RECIPIENT REQUIREMENTS:

A. **Age:** To be eligible for SCI, an individual must be age 19 through 64.

B. **Continuing eligibility on the factor of age:** When an individual has been determined eligible on the condition of age, he remains eligible on the condition until the applicable upper age limit is reached. An individual who exceeds the age limit during a given month is eligible for that month, unless the birthday is the first day of the month.

C. **Uninsured:** For purposes of SCI eligibility, an individual cannot have health insurance coverage, excluding catastrophic or supplemental health insurance policies. An individual with access to health care at Indian health services, veteran's administration, or through worker's compensation, is not considered to be insured for purposes of this program by having such access.

D. **Enrolled:** An individual who has been determined eligible for SCI must notify an SCI-contracted MCO and must have made and continue to make premium payment as a condition of SCI coverage.

E. **Premium payment:** SCI requires payment of premiums by the employer at a rate established by the department, and by the employee per month as calculated by income level: 062A, 062B and 062C. Some individuals may be required to pay both the employers and employee's share based on income level. Nothing in this section prevents another entity from contributing the employer or employee premium share on behalf of an individual member. Nothing in this section prevents the employer or a third party from paying the employee portion of the premium on behalf of the employee. The due date of premium payments will be determined by the MCO. If an individual's category of SCI eligibility changes at annual recertification for the program, resulting in a different premium payment due, the new premium amount is effective beginning with the first month of the new recertification approval period. Individuals who fail to pay the premium within the timeframe established by the MCO may be disenrolled.

F. **Voluntary drop of health insurance:** An individual who has

voluntarily dropped health insurance will be ineligible for SCI for six months, starting with the first month the health insurance was dropped (i.e., the first month of no coverage). An employer who has voluntarily dropped health insurance will be ineligible to enroll employees in SCI for ~~[twelve]~~ 12 months. The following circumstances are not considered a voluntary drop:

(1) an individual (or spouse) fails to take advantage of an initial offer of health insurance by an employer (unless the insurance is SCI coverage), or fails or refuses to take advantage of a COBRA continuation policy;

(2) loss of access to employer-sponsored insurance due to loss of employment, divorce, death of a spouse, or geographic move, loss of coverage as a dependent child, or loss of medicaid eligibility; ~~[or]~~

(3) an employee enrolled in an individual health plan whose employer is offering SCI employer-sponsored insurance (as an initial offering or at open enrollment) will be able to participate in SCI under group coverage and will not be considered to have voluntarily dropped health insurance in order to participate in the SCI employer group plan; ~~or~~

(4) an individual who was covered under SCI within the most recent 12 months and had reached the annual benefit maximum and was transitioned to the New Mexico medical insurance pool, will be able to re-enroll in SCI at his/her annual SCI recertification period.

G. **Cost-sharing maximums:** An SCI-covered individual is responsible for tracking and reporting of the cost-sharing amount paid in a benefit year, and for reporting to the managed care organization (MCO) when the cost-sharing maximum amounts are met (also known as "shoebox methodology"). The first month of coverage without cost-sharing will be the month after the month of verification that the maximum expenditure limit has been met, unless the determination is made after the 24th of the month. Where the determination is made after the 24th of the month, the first month of coverage without cost-sharing will be the second month after verification. The period of coverage without cost-sharing will end on the last day of that benefit year. No partial payments of premiums or of copayments will be allowed. No premiums or copayments will be refunded.

[8.262.400.17 NMAC - N, 7-1-05; A, 4-16-07; A/E, 8-1-07; A, 7-1-09; A, 6-1-10]

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

This is an amendment to 8.262.500 NMAC, Sections 3 and 4, effective June 1, 2010.

8.262.500.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) ~~[waiver]~~ waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.262.500.3 NMAC - N, 7-1-05; A, 6-1-10]

8.262.500.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.262.500.4 NMAC - N, 7-1-05; A, 6-1-10]

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

This is an amendment to 8.262.600 NMAC, Sections 3 and 4, effective June 1, 2010.

8.262.600.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The state was granted a ~~[5-year]~~ health insurance flexibility and accountability (HIFA) waiver under Section 1115 of the Social Security Act and a medicaid demonstration waiver under Section 1115, both subject to certain terms and conditions. The state is using ~~[the]~~ waiver authority to implement the State Coverage Insurance ~~[(SCI program)]~~ (SCI) program. The SCI program offers a basic benefit package to adults with countable income of less than 200[%] percent of the federal poverty level. There is no fee-for-service coverage under SCI. The benefits begin after enrollment with one of the contracted managed care organizations.

[8.262.600.3 NMAC - N, 7-1-05; A, 6-1-10]

8.262.600.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.262.600.4 NMAC - N, 7-1-05; A, 6-1-10]

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

This is an amendment to 8.306.1 NMAC, Sections 3, 4 and 7, effective June 1, 2010.

8.306.1.3 STATUTORY

AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.1.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.1.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.1.4 NMAC - N, 7-1-05; A, 6-1-10]

8.306.1.7 DEFINITIONS: The state of New Mexico is committed to reducing the number of uninsured working New Mexico residents and improving the number of small employers offering health benefit plans by implementation of a basic health coverage health insurance benefit provided by contracted managed care organization with cost sharing by members, employers and the state and federal governments. This section contains the glossary for the New Mexico state coverage insurance policy. The following definitions apply to terms used in this chapter.

A. Definitions beginning with letter "A":

(1) **Abuse:** Provider practices that are inconsistent with sound fiscal, business or medical practices and result in unnecessary cost to SCI, in reimbursement for services that are not medically necessary, or in services that fail to meet professionally recognized standards for health care. Abuse also includes member or member practices that result in unnecessary costs to SCI.

(2) **Action:** The denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, modification or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; or the failure to provide services in a timely manner. An untimely service authorization constitutes a denial and is thus considered an action.

(3) **Appeal, member:** A request from a member or provider, on the member's

behalf with the member's written permission, for review by the managed care organization (MCO) of an MCO action as defined above in Paragraph (2) of Subsection A of 8.306.1.7 NMAC.

(4) **Appeal, provider:** A request by a provider for review by the MCO of an MCO action related to the denial of payment or an administrative denial.

(5) **Approvals:** Approvals are either initial or concurrent review decisions, which yield utilization management authorizations based on the member meeting the clinical criteria for the requested SCI service(s) or level of care.

B. Definitions beginning with letter "B":

(1) **Behavioral health planning council (BHPC):** Refers to the council created by HB 271 to meet federal advisory council requirements and to provide consistent, coordinated input to the behavioral health service delivery in New Mexico. The SE will be expected to interact with the BHPC as an advisory council.

(2) **Behavioral health:** Refers to mental health and substance abuse.

(3) **Behavioral health purchasing collaborative (the collaborative):** Refer to the interagency behavioral health purchasing collaborative pursuant to the passage of HB 271 effective May 19, 2004. The collaborative is made up of 17 publicly funded statutory member agencies including 15 direct service providers and funding agencies, including the human services department.

(4) **Benefit package:** SCI covered services that must be furnished by the MCO and for which payment is included in the capitation rate.

(5) **Benefit year:** The year beginning with the month of enrollment in an MCO and payment of designated premiums if applicable and continuing for a period up to 12 continuous months as long as enrollment requirements are met.

(6) **Broker:** A person, partnership, corporation or professional corporation appointed by a health insurer licensed to transact business in New Mexico to act as its representative in any given locality for the purpose of soliciting and writing any policy or contract insuring against loss or expense resulting from the sickness of the insured.

C. Definitions beginning with letter "C":

(1) **Capitation:** A per-member, monthly payment to an MCO that covers contracted services and is paid in advance of service delivery. It is a set amount of money received or paid out, based on membership rather than on services delivered. It is usually expressed "per member per month" (PM/PM).

(2) **Care coordination:** An office-based administrative function to assist

members "at risk" for adverse outcomes to help meet their needs by filling in gaps in current health care on an as needed basis. Care coordination is member-centered, family-focused when appropriate, culturally competent and strengths-based, and ensures that the medical and behavioral health needs of the SCI population are identified and services are provided and coordinated with the member and family, as appropriate. Care coordination involves, but is not limited to, the following: planning treatment strategies; monitoring outcomes and resource use; coordinating visits with subspecialists; organizing care to avoid duplication of diagnostic tests and services; sharing information among health care professionals, other program personnel, and family; facilitating access to services; actively managing transitions of care, such as a hospital discharge; training of caregivers; and ongoing reassessment and refinement of the care plan. Care coordination operates independently within the MCO and has separately defined functions with a dedicated care coordination staff but is structurally linked to the other MCO systems, such as quality assurance, member services, and grievances. Clinical decisions shall be based on the medically necessary covered services and not on fiscal or administrative considerations. The care coordinator coordinates services within the physical and behavioral health delivery system, as well as with other service providing systems. The care coordinator may interface and collaborate with the member's case manager, or refer the member to case management as necessary. If both physical and behavioral health conditions exist, the primary care coordination responsibility lies with the condition that is most acute.

(3) **Case management:** Case management consists of services which help beneficiaries gain access to needed physical health, behavioral health, social, educational, and other services. A person or team of people who provide outreach to customers, provide information to them about services, work with them to develop a service plan, assist in obtaining needed services, supports and entitlements and advocate on their behalf. General case management is designed to access, coordinate and monitor services.

(4) **Category:** A designation of the automated eligibility system. SCI has one designated category (062) and three income groupings that are assigned to an individual based on their income grouping. The assigned category is applicable for a period of 12 consecutive months regardless of changes in income or family status, subject to change by request from the recipient.

(5) **Childless adult population:** Non-pregnant, childless adults, ages 19 through 64 years, with household income

below 200 percent of the federal poverty level, who do not otherwise qualify for medicaid or medicare.

[(5)] (6) **Clean claim:** A manually or electronically submitted claim from a participating provider that contains substantially all the required data elements necessary for accurate adjudication without the need for additional information from outside the health plan's system. It does not include a claim from a provider who is under investigation for fraud or abuse, or a claim under review for medical necessity. A clean claim is not materially deficient or improper, such as lacking substantiating documentation currently required by the health plan, or has no particular or unusual circumstances requiring special treatment that prevents payment from being made by the health plan within 30 days of the date of receipt if submitted electronically or 45 days if submitted manually.

[(6)] (7) **Client:** An individual who has applied for and been determined eligible for SCI. A "client" may also be referred to as a "member," "customer," or "consumer", or "program participant".

[(7)] (8) **CMS:** Centers for medicare and medicaid services.

[(8)] (9) **Community-based care:** A system of care, which seeks to provide services to the greatest extent possible, in or near the member's home community.

[(9)] (10) **Comprehensive community support services:** These services are goal-directed mental health rehabilitation services and support for children, adolescents, and adults necessary to assist individuals in achieving recovery and resiliency goals. These services assist in the development and coordination of a member's service plan and include therapeutic interventions which address barriers that impede the development of skills necessary for independent functioning in the community.

[(+0)] (11) **Continuous quality improvement (CQI):** CQI is a process for improving quality that assumes opportunities for improvement are unlimited; is customer-oriented, data driven, and results in implementation of improvements; and requires continual measurement of implemented improvements and modification of improvements, as indicated.

[(+)] (12) **Coordination of long-term services (CoLTS):** A coordinated program of physical health and community-based supports and services implemented under the authority of concurrent section 1915(b) and section 1915(c) waivers. The CoLTS program includes individuals eligible for both medicare and medicaid, and persons eligible for medicaid long-term care services based on assessed need for nursing facility level of care. The CoLTS program

does not include individuals who meet eligibility criteria set forth in New Mexico's developmental disabilities and medically-frangible waiver programs.

[(+2)] (13) **Cost-sharing:** Premiums and co-payments owed by the member based on income group category.

[(+3)] (14) **Cost-sharing maximum:** The cost sharing maximum is determined during the initial eligibility determination and recertification process. The cost sharing maximum amount established at the point of eligibility determination for the benefit year represents an amount equal to five percent of the program participant's countable household income.

[(+4)] (15) **Coverage:** Coverage month is a month where all eligibility and enrollment requirements including premium payment, if applicable are met.

[(+5)] (16) **Cultural competence:** Cultural competence refers to a set of congruent behaviors, attitudes and policies that come together in a system, agency, or among professionals, that enables them to work effectively in cross-cultural situations. Cultural competency involves the integration and transformation of knowledge, information and data about individuals and groups of people into specific clinical standards, skills, service approaches, techniques and marketing programs that match an individual's culture and increase the quality and appropriateness of health care and outcomes.

D. Definitions beginning with letter "D":

(1) **Delegation:** A formal process by which the MCO gives another entity the authority to perform certain functions on its behalf. The MCO retains full accountability for the delegated functions.

(2) **Denial-administrative/technical:** A denial of authorization requests due to the requested procedure, service or item not being covered by SCI, not being on the MCO pharmacy drug list, or due to provider noncompliance with administrative policies and procedures established by either the SCI MCO or the medical assistance division.

(3) **Denial-clinical:** A non-authorization decision at the time of an initial request for a SCI service or a pharmacy drug list request based on the member not meeting medical necessity for the requested service. The utilization management (UM) staff may recommend an alternative service, based on the member's need for a lower level of service. If the requesting provider accepts this alternative service, it is considered a new request for the alternative service and a clinical denial of the original service request.

(4) **Disease management plan:** A comprehensive plan following nationally recognized components for

chronic disease interventions including population identification/stratification process, collaborative practice models, patient self-management education process, evidence-based practice guidelines, process and outcomes measurements, and internal quality improvement processes.

(5) **Disenrollment, MCO initiated:** When requested by an MCO for substantial reason, removal of an individual SCI member from membership in the requesting MCO, as determined by HSD, on a case-by-case basis.

(6) **Disenrollment, member initiated (switch):** When requested by a member for substantial reason, transfer of an individual SCI member as determined by HSD on a case-by-case basis, from one SCI MCO to a different SCI MCO during a member lock-in period.

(7) **Durable medical equipment (DME):** Equipment that can withstand repeated use, is primarily used to serve a medical purpose, is not useful to individuals in the absence of an illness or injury and is appropriate for use at home.

E. Definitions beginning with letter "E":

(1) **Emergency:** An emergency condition is a physical or behavioral health condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to body function or serious dysfunction of any bodily organ or part.

(2) **Employer:** An employer with 50 or fewer eligible employees on a full or part time basis.

(3) **Employer group:** A group of employees employed by an eligible employer who receive SCI benefits through the employer or a self-employed person who will be considered a group of one.

(4) **Employee:** A person employed by an employer who participates in the SCI health benefit plan.

(5) **Encounter:** The record of a physical or behavioral health service rendered by a provider to an MCO member, client, customer or consumer.

(6) **Enrollee:** A SCI recipient who is currently enrolled in a managed care organization.

(7) **Enrollee rights:** Rights which each SCI enrollee is guaranteed.

(8) **Enrollment:** The process of enrolling eligible members in an MCO for purposes of management and coordination of health care delivery. The process of enrolling members either by the employer or

individually in an available SCI-participating MCO for purposes of health care coverage. Enrollment encompasses selection of an MCO, notification of the selection to the MCO, and timely payment of premiums to the MCO as determined by the MCO.

(9) **Expedited appeal:** A federally mandated provision for an expedited resolution within 72 hours of the requested appeal, which includes an expedited review by the MCO of an MCO action.

(10) **External quality review organization (EQRO):** An independent organization with clinical and health services expertise capable of reviewing the evidence of compliance of health care delivery and internal quality assurance/improvement requirements.

F. Definitions beginning with letter "F":

(1) **Family planning services:** Services provided to members of childbearing age to temporarily or permanently prevent or delay pregnancy (see 8.325.3 NMAC [MAD-762], *Reproductive Health Services*).

(2) **Fraud:** An intentional deception or misrepresentation made by an entity or person, including but not limited to, an MCO, subcontractor, provider or member with the knowledge that the deception could result in some unauthorized benefit to himself or to some other previously described entity or person. It includes any act that constitutes fraud under applicable federal or state law.

(3) **Full risk contracts:** Contracts that place the MCO at risk for furnishing or arranging for comprehensive services.

G. Definitions beginning with letter "G":

(1) **Gag order:** Subcontract provisions or MCO practices, either written, oral or implied, that effectively prevent a provider from furnishing accurate or complete information to members about options for diagnosis or treatment of physical, mental or behavioral illness, injury, or condition; or prevent a provider from talking to the member or HSD about the MCO or their business practices.

(2) **Grievance (member):** Oral or written statement by a member expressing dissatisfaction with any aspect of the MCO or its operations that is not an MCO action.

(3) **Grievance (provider):** Oral or written statement by a provider to the MCO regarding utilization management decisions or provider payment issues.

(4) **Group of one:** Individuals who enroll without an employer group but report self-employment.

H. Definitions beginning with letter "H":

(1) **Health plan:** A health maintenance organization (HMO), managed care organization (MCO), prepaid inpatient health plan (PIHP), or third party payer or their agents.

(2) **HIPAA:** Health Insurance Portability and Accountability Act of 1996.

(3) **Hospitalist:** A physician employed by a hospital to manage the care of a member admitted to the hospital for inpatient care.

(4) **Human services department (HSD):** The sole executive department in New Mexico responsible for the administration of SCI. "HSD" may also indicate the department's designee, as applicable.

I. Definitions beginning with letter "I":

(1) **Income groupings:** 0-100 percent, 101-150 percent, and 151-200 percent of federal poverty levels: These income groupings define the premium, copayment, and cost-sharing maximums for SCI cost-sharing purposes.

(2) **Incurred but not reported (IBNR):** Claims for services authorized or rendered for which the MCO has incurred financial liability, but the claim has not been received by the MCO. This estimating method relies on data from prior authorization and referral systems, other data analysis systems and accepted accounting practices.

(3) **Individual:** A person who enrolls in SCI who is not a member of an eligible employer group and pays the premium amount designated for both the employee and employer share, if applicable, based on household income [~~and—the employer share~~] or has that amount paid on his behalf by another entity.

J. Definitions beginning with letter "J": [RESERVED]

K. Definitions beginning with letter "K": [RESERVED]

L. Definitions beginning with letter "L": [RESERVED]

M. Definitions beginning with letter "M":

(1) **Managed care organization (MCO):** An organization licensed or authorized through an agreement among state entities to manage, coordinate and receive payment for the delivery of specified services to enrolled members from a certain geographic area. Also referred to as a managed care plan and managed care program.

(2) **Marketing:** The act or process of promoting a business or commodity. Marketing includes brochures, leaflets, internet, newspaper, magazine, radio, television, billboard materials, MCO yellow page advertisements, and any other presentation materials used by an MCO, MCO representative, or MCO subcontractor to attract or retain SCI enrollment.

(3) **Medicaid:** The medical assistance program authorized under Title XIX of the Social Security Act or its successors, furnished to New Mexico

residents who meet specific eligibility requirements.

(4) **Medicaid/clinical home:** A conceptual model that facilitates the provision of quality care that is accessible, family-centered, continuous, coordinated, compassionate and culturally competent.

(5) **Medically necessary services:** (a) Medically necessary services are clinical and rehabilitative physical or behavioral health services that:

(i) are essential to prevent, diagnose or treat medical or behavioral health conditions or are essential to enable the individual to attain, maintain or regain functional capacity;

(ii) are delivered in the amount, duration, scope and setting that is clinically appropriate to the specific physical and behavioral health care needs of the individual;

(iii) are provided within professionally accepted standards of practice and national guidelines; and

(iv) are required to meet the physical and behavioral health needs of the individual and are not primarily for the convenience of the individual, the provider or the payer.

(b) Application of the definition:

(i) a determination that a health care service is medically necessary does not mean that the health care service is a covered benefit or an amendment, modification or expansion of a covered benefit;

(ii) the MCO/SE making the determination of the medical necessity of clinical, rehabilitative and supportive services consistent with the SCI benefit package applicable to an eligible individual shall do so by: 1) evaluating individual physical and behavioral health information provided by qualified professionals who have personally evaluated the individual within their scope of practice, who have taken into consideration the individual's clinical history including the impact of previous treatment and service interventions and who have consulted with other qualified health care professionals with applicable specialty training, as appropriate; 2) considering the views and choices of the individual or the individual's legal guardian, agent or surrogate decision maker regarding the proposed covered service as provided by the clinician or through independent verification of those views; and 3) considering the services being provided concurrently by other service delivery systems;

(iii) physical and behavioral health services shall not be denied solely because the individual has a poor prognosis; required services may not be arbitrarily denied or reduced in amount, duration or scope to an otherwise eligible individual solely because of the diagnosis,

type of illness or condition.

(6) **Member:** A eligible member enrolled in an MCO.

(7) **Member month:** A calendar month during which a member is enrolled in an MCO.

(8) **Mi via home and community-based waiver:** The New Mexico self-directed medicaid waiver program that supports New Mexicans with disabilities and the elderly by allowing recipients to be active participants in choosing where and how they live and what services and supports they purchase.

N. Definitions beginning with letter "N":

(1) **National committee for quality assurance (NCQA):** A private national organization that develops quality standards for managed health care.

(2) **Network provider:** An individual provider, clinic, group, association or facility employed by or contracted with an MCO to furnish physical or behavioral health services to the MCO's members under the provisions of the SCI managed care contract.

(3) **Notice:** A written statement that includes what action is being taken, the reasons for the intended action, the specific regulation that requires the action, and an explanation of the circumstances under which the service may be continued if a hearing is requested.

O. Definitions beginning with letter "O": **Outreach:** The act or process of promoting an insurance product through established business channels of communications including brochures, leaflets, internet, print media, electronic media, signage or other materials used by MCOs to attract or retain SCI enrollment primarily through employer groups.

P. Definitions beginning with letter "P":

(1) **Parent population:** Uninsured parents, ages 19 through 64, of medicaid and CHIP-eligible children, who are not otherwise eligible for medicaid or medicare, with household income below 200 percent of the federal poverty level.

[(+)] (2) **Parental or custodial relative status:** The state of having a dependent child under the age of 18 who is the son, daughter, or relative within the fifth degree of relationship living in the household and under the care and control of the individual.

[(2)] (3) **Pend decision:** A prior authorization decision is considered pended when the decision is delayed due to lack of documentation, inability to contact parties involved or other reason which delays finalizing an approval. A decision by an MCO to pend approval does not extend or modify required utilization management decision timelines.

[(3)] (4) **Performance improvement project (PIP):** An MCO program activity must include projects that are designed to achieve significant improvement in clinical or non-clinical care areas. PIPs must involve measurements using objective quality indicators, system intervention to achieve improvement, evaluation of the effectiveness of interventions and activities for increasing or sustaining improvement. Outcomes must be measurable over a period of time.

[(4)] (5) **Performance measurement (PM):** Data specified by the state that enables the MCO's performance to be determined.

[(5)] (6) **Plan of care:** A written document including all medically necessary services to be provided by the MCO for a specific member.

[(6)] (7) **Policy:** The statement or description of requirements.

[(7)] (8) **Potential enrollee:** A medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO.

[(8)] (9) **Pregnancy-related services:** Medically necessary medical or surgical services related to pregnancy, including procedures to terminate pregnancy.

[(9)] (10) **Preventative health services:** Services that follow current national standards for prevention including both physical and behavioral health.

[(+0)] (11) **Primary care:** All health services and laboratory services customarily furnished by or through a general practitioner, family physician, internal medicine physician, obstetrician/gynecologist, pediatrician, physician assistant or certified nurse practitioner.

[(+)] (12) **Primary care provider (PCP):** A provider who agrees to manage and coordinate the care provided to members in the managed care program.

[(+2)] (13) **Procedure:** Process required to implement a policy.

Q. Definitions beginning with letter "Q": [RESERVED]

R. Definitions beginning with letter "R":

(1) **Rate cell:** A combination of category of eligibility and demographics used to isolate utilization patterns for the determination of capitation.

(2) **Received but unpaid claims (RBUC):** Claims received by the MCO but not paid affecting appropriate expense and aging accounting categories. Such claims are counted as of the date of receipt by the MCO.

(3) **Reduction of care:** A utilization management staff authorization of the type of service requested by the provider but in lesser amounts or units of

service, based on the member's physical health, medical or behavioral health clinical need, than was originally requested, except pharmaceutical services which are covered by the formulary process.

(4) **Referral:** Any specialty, inpatient, outpatient, or diagnostic services that a physician or physician group orders or arranges, but does not provide directly.

(5) **Reinsurance:** Reinsurance is a proactive financial tool that may be used by an MCO to minimize exposure to losses incurred when members utilize health care services beyond anticipated levels or overall member utilization is greater than expected.

(6) **Risk:** The possibility that revenues of the MCO will not be sufficient to cover expenditures incurred in the delivery of contractual services.

(7) **Routine care:** All care, which is not emergent or urgent.

S. Definitions beginning with letter "S":

(1) **Salud!:** the New Mexico managed care program implemented in 1997, covering children, pregnant women and disabled New Mexicans. Parents of medicaid-eligible children are also covered by medicaid if they meet eligibility requirements.

(2) **SCI (state coverage insurance):** The New Mexico health care program implemented under the authority of the health insurance flexibility and accountability (HIFA) waiver granted to the state by the centers for medicare and medicaid services (CMS).

(3) **SCI members with special health care needs (SCI-SHCN):** Individuals who have, or are at an increased risk for, a chronic physical, developmental, behavioral, neurobiological or emotional condition, or low to severe functional limitation and who also require health and related services of a type or amount beyond that required by individuals generally.

(4) **Single statewide entity (SE):** Refers to the entity selected by the state of New Mexico through the collaborative to perform all contract functions defined in the behavioral health request for proposal (RFP). The SE is a single contractor selected to provide all defined service responsibilities statewide, including medicaid behavioral health benefits. The SE will receive delegation by the MCO for SCI managed care. The SE shall contract with the MCO and may be responsible for contracting with providers, paying provider claims, assuring care coordination, conducting utilization review and utilization management activities, assuring quality review and service delivery improvement, credentialing practitioners and provider agencies, privileging practitioners to deliver critical services or service approaches, evaluating and monitoring of service delivery and

conducting any other administrative functions necessary to achieve the goals of the collaborative. The SE is the agent of the collaborative and shall "coordinate," "braid" or "blend" the funding, human resources and service capacity available from the various state agencies so as to increase flexibility, maximize available resources and create a seamless single behavioral health service delivery system for New Mexico."

(5) **Subcontract:** A written agreement between the MCO and a third party, or between a subcontractor and another subcontractor, to provide services.

(6) **Subcontractor:** A third party who contracts with the MCO or an MCO subcontractor for the provision of services.

T. Definitions beginning with letter "T":

(1) **Terminations of care:** The utilization management review decision made during a concurrent review, which yields a denial, based on the current service being no longer medically necessary.

(2) **Third party:** An individual entity or program, which is or may be, liable to pay all or part of the expenditures for SCI members for services furnished.

(3) **Transition of care:** Refers to the movement of patients from one health care practitioner or setting to another as their condition and care requires change.

U. Definitions beginning with letter "U": **Urgent condition:** Acute signs and symptoms, which, by reasonable medical judgment, represent a condition of sufficient severity such that the absence of medical attention within 24 hours could reasonably be expected to result in an emergency condition.

V. Definitions beginning with the letter "V": **Value added benefit:** Any benefit offered to members by the MCO that is not included in the SCI benefit package.

[8.306.1.7 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A, 6-1-08; A, 7-1-09; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.2 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.2.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless

adult population, both subject to special terms and conditions.

[8.306.2.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.2.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.2.4 NMAC - N, 7-1-05; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.3 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.3.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.3.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.3.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.3.4 NMAC - N, 7-1-05; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.4 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.4.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.4.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.4.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to

availability of funds.

[8.306.4.4 NMAC - N, 7-1-05; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.5 NMAC, Sections 3, 4 and 9, effective June 1, 2010.

8.306.5.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both, subject to special terms and conditions.

[8.306.5.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.5.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.5.4 NMAC - N, 7-1-05; A, 6-1-10]

8.306.5.5 ENROLLMENT PROCESS:

A. **Enrollment requirements:** The managed care organization (MCO) shall provide [an open] a defined enrollment period, as determined by HSD, during which the MCO will enroll individuals in accordance with accepted MCO practice in the order in which they apply, up to the limits contained in the contract or based upon enrollment limits set forth in the demonstration waivers. The MCO shall not discriminate on the basis of health status or a need for health care services. The MCO shall not discriminate against individuals eligible to enroll on the basis of disability, race, color, national origin, or sexual orientation. The MCO shall not use any policy or practice that has the effect of discriminating on the basis of disability, race, color, national origin, or sexual orientation. All enrollments shall be voluntary and based on member or employer choice.

B. **Member lock-in:** Except as otherwise provided below, once a member in an employer group has enrolled in an MCO through his employer group, he may only transfer to another MCO, 1) during the employer enrollment period, that occurs when the employer contracts with another MCO; or 2) if he changes employers. A member enrolled individually may only

transfer to another MCO when his eligibility is recertified or “for cause” as defined as follows: the following criteria shall be cause for transfer:

- (1) continuity of care issues;
- (2) family continuity;
- (3) administrative or data entry error in assigning a client to an MCO;

(4) assignment of a member where travel for primary care exceeds community standards (90 percent of urban residents shall travel no further than 30 miles to see a PCP; 90 percent of rural residents shall travel no further than 45 miles to see a PCP; and 90 percent of frontier residents shall travel no further than 60 miles to see a PCP); urban counties are: Bernalillo, Los Alamos, Santa Fe and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel and Cibola; rural counties are those which are not listed as urban or frontier;

(5) the member moves out of the MCO service area;

(6) the MCO does not, because of moral or religious objections, cover the service the member seeks;

(7) the member needs related services to be performed at the same time, not all related services can be provided by the PCP, and another provider determines that receiving the services separately would subject the member to unnecessary risk; and

(8) other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to providers experienced in dealing with the member’s health care needs; if applicable, the member shall be notified by the MCO, 60 days prior to the expiration of the member’s lock-in period of the deadline for selecting a new MCO; members in an employer group will be notified of the employer enrollment period by the employer or the broker, if applicable; members who are not in an employer group will be notified of the expiration of their lock-in period by the MCO.

C. Selection period: After receiving a letter of eligibility from the ISD office or an enrollment packet from the MCO, a new individual member shall complete enrollment with an MCO within a 90 day period. If enrollment, including payment of any required premium, is not made within that timeframe, the member shall be considered to have voluntarily dropped the SCI insurance coverage, which means that the individual may not enroll with an SCI MCO for six months, beginning with the individual’s eligibility start date. An employer group has a specified time period, determined by the MCO and HSD, in which to complete enrollment and premium payment with an SCI MCO after all employees have received their letters of eligibility. Failure

of the employer to complete the enrollment process within this time period will deem the employer to have voluntarily dropped insurance coverage and the employer will be ineligible to enroll with an SCI MCO for a 12-month period; however, the individual employees are eligible to enroll immediately as individuals and will not be considered to have voluntarily dropped health insurance coverage.

D. Beginning date of enrollment: Enrollment begins the first day of the first full month following receipt of eligibility letter and MCO completion of enrollment including receipt of required premiums. However, if MCO receipt of required premium payment occurs after the HSD-approved designated day of the month and before the first full day of the following month, the enrollment begins on the first day of the second full month after MCO receipt of premium payments.

E. Member switch enrollment: A member enrolled as an individual and not as an employee enrolled through an employer group may request to be disenrolled from an MCO and switch to another MCO (if available) “for cause” at any time. The request shall be made in writing to HSD. HSD shall review the request and furnish a written response to the member and the MCO in a 30 day period. The following criteria shall be used to make a decision regarding a switch enrollment request:

- (1) continuity of care issues;
- (2) family continuity;
- (3) administrative or data entry error in enrolling a member with an MCO;

(4) travel for primary care exceeds community standards, (90 percent of urban residents shall travel no further than 30 miles to see a PCP; 90 percent of rural residents shall travel no further than 45 miles to see a PCP; and 90 percent of frontier residents shall travel no further than 60 miles to see a PCP); urban counties are: Bernalillo, Los Alamos, Santa Fe and Dona Ana; frontier counties are: Catron, Harding, DeBaca, Union, Guadalupe, Hidalgo, Socorro, Mora, Sierra, Lincoln, Torrance, Colfax, Quay, San Miguel and Cibola; rural counties are those which are not listed as urban or frontier;

(5) the member moves out of the MCO service area;

(6) the MCO does not, because of moral or religious objections, cover the service the member seeks;

(7) the member needs related services to be performed at the same time, not all related services can be provided by the PCP, and another provider determines that receiving the services separately would subject the member to unnecessary risk; and

(8) other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract,

or lack of access to providers experienced in dealing with the member’s health care needs; if applicable, the member shall be notified by the MCO, 60 days prior to the expiration of the member’s lock-in period of the deadline for selecting a new MCO; members in an employer group will be notified of the employer enrollment period by the employer or the broker, if applicable; members who are not in an employer group will be notified of the expiration of their lock-in period by the MCO.

F. Disenrollment, MCO initiated: The MCO may request that a particular member be disenrolled. Other than for non-payment of premiums, member disenrollment from an MCO will be considered only in rare circumstances. Disenrollment requests shall be made in writing to HSD. The MCO shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The MCO shall submit a copy of the member’s notification letter to HSD. If the disenrollment is granted, the MCO retains responsibility for the member’s care until the member is enrolled with another SCI-contracted MCO. If the member is part of an employer group and the employer does not contract with another MCO, HSD may allow the member to enroll with another MCO, but the member shall be responsible for the employer’s premium share, if required. The MCO shall assist with transition of care to the other MCO.

G. Conditions under which an MCO requests member disenrollment: The MCO may not seek to terminate enrollment because of an adverse change in the member’s health. The MCO shall not request disenrollment because of an adverse change in the member’s health status or because of the member’s utilization of medical services, diminished mental capacity, or uncooperative or disruptive behavior resulting from his special needs, except when his continued enrollment with the MCO seriously impairs the MCO’s ability to furnish services to either this particular member or other members. The MCO shall notify the member in writing of the disenrollment request at the same time the request is submitted to HSD. The MCO shall submit a copy of the member’s notification letter. If the disenrollment is granted, the MCO retains responsibility for the member’s care until the member is enrolled with another MCO. The MCO shall assist with transition of care.

H. Re-enrollment limitations: If a request for disenrollment is approved, the member shall not be re-enrolled with the requesting MCO for a period of time to be determined by HSD. The member and the requesting MCO shall be notified by HSD of the period of disenrollment. If a member has been disenrolled by all available

contracted MCOs, HSD shall evaluate the member for termination from SCI.

I. Date of disenrollment: MCO enrollment shall terminate at the end of the month following the month in which HSD approval for disenrollment is granted. [8.306.5.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A/E, 8-1-07; A, 7-1-09; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.6 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.6.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions. [8.306.6.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.6.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds. [8.306.6.4 NMAC - N, 7-1-05; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.7 NMAC, Sections 3, 4, 11 and 12, effective June 1, 2010.

8.306.7.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions. [8.306.7.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.7.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to

availability of funds. [8.306.7.4 NMAC - N, 7-1-05; A, 6-1-10]

8.306.7.11 SERVICES INCLUDED IN THE SCI BENEFIT PACKAGE: The SCI benefit package includes provider and consultation services and supplies that are reasonably required to maintain good health and are provided by or under the direction of the member's PCP. The following lists covered services and provides additional information.

A. Provider services:

- (1) office visits;
- (2) home visits;
- (3) hospital and inpatient physical rehabilitation facility visits by physician;
- (4) inpatient and outpatient surgery (includes assistant surgeon's charges);
- (5) office procedures;
- (6) inpatient professional care services, including pathologists, radiologists and anesthesiologists;
- (7) allergy testing;
- (8) allergy injections;
- (9) antigen serum;
- (10) injections in accordance

with accepted medical practice to treat acute conditions, which are customarily administered in a provider's office;

- (11) injections in accordance with acceptable medical practice used to treat chronic conditions, including, but not limited to, diseases such as rheumatoid arthritis, crohn's disease, and hepatitis C; and
- (12) routine and diagnostic x-rays and clinical laboratory tests.

B. Inpatient hospital services: The benefit package includes inpatient hospital services as detailed below.

- (1) Hospital admissions must have prior authorization and are to be provided under the direction of the member's PCP or a consulting provider to whom the member is referred by his PCP. Any service or procedure not outlined below requires a prior authorization.

- (2) Inpatient hospitalization coverage is limited to 25 days per benefit year. This 25-day limitation is combined with home health services and inpatient physical rehabilitation.

- (3) Inpatient hospital services include:

- (a) semi-private room and board accommodations, including general duty nursing care;

- (b) private room and board accommodations when medically necessary; prior authorization is required;

- (c) in-hospital therapeutic and support care, services, supplies and appliances, including care in specialized intensive and coronary care units;

- (d) use of all hospital facilities, including operating, delivery, recovery, and treatment rooms and equipment;

- (e) laboratory tests, x-rays, electrocardiograms (EKGs), electroencephalograms (EEGs), and other diagnostic tests performed in conjunction with a member's admission to a hospital;

- (f) anesthetics, oxygen, pharmaceuticals, medications, and other biological;

- (g) dressings, casts, and special equipment when supplied by the hospital for use in the hospital;

- (h) inpatient meals and special diets;

- (i) inpatient radiation therapy or inhalation therapy;

- (j) rehabilitative services - physical, occupational, and speech therapy;

- (k) administration of whole blood, blood plasma, and components;

- (l) discharge planning and coordination of services; and

- (m) maternity care.

C. Outpatient services:

The benefit package includes outpatient services performed in a hospital or other approved outpatient facility. Outpatient services:

- (1) can reasonably be provided on an ambulatory basis;

- (2) are preventive, diagnostic or treatment procedures provided under the direction of the member's PCP or a consulting provider to whom the member is referred by the PCP;

- (3) require prior authorization, unless otherwise noted; and

- (4) the following provides additional information on covered outpatient services and associated co-payments:

- (a) surgeries, including use of operating, delivery, recovery, treatment rooms, equipment and supplies, including anesthesia, dressings and medications;

- (b) radiation therapy and chemotherapy;

- (c) magnetic resonance imaging (MRI);

- (d) positron emission tomography (PET) tests;

- (e) CT scan;

- (f) holter monitors and cardiac event monitors;

- (g) routine and diagnostic x-rays, clinical laboratory tests, electrocardiograms (EKGs), and electroencephalograms (EEGs);

- (h) cardiovascular rehabilitation; and

- (i) rehabilitative services - physical, occupational, and speech therapy; rehabilitative services for short-term physical, occupational, and speech therapies are covered; short-term therapy includes therapy services that produce significant and demonstrable improvement within a two-month period from the initial date of treatment; the member's PCP or other

appropriate treating provider to whom the member has been referred shall determine in advance of rehabilitative services that these services can be expected to result in significant improvement in the member's physical condition within a period of two months; requests for rehabilitative services from therapists will not be approved; these services shall be requested by the ordering provider and require a prior authorization.

(i) Extension of short-term therapy beyond the initial two months may be extended for one period of up to two months, contingent on the approval of the MCO's medical director, only if such services can be expected to result in continued significant improvement of the member's physical condition within the extension period. Expectation of significant improvement will be established if the member has complied fully with the instructions for care and has met all therapy goals for the preceding two-month period as documented in the therapy record.

(ii) Therapy services extending beyond the two-month period from the initial date of treatment are considered long-term therapy and are not covered under SCI. Long-term therapy includes treatment for chronic or incurable conditions for which rehabilitative services produce minimal or temporary change or relief. Chronic conditions include, but are not limited to, muscular dystrophy, cerebral palsy, developmental delay, myofascial pain disorders, arthritis, autism, and syndromes of chromosomal abnormalities.

D. Emergency and urgently needed health services: The benefit package includes emergency and urgently needed health services. These services are available 24 hours a day, seven days a week. The benefit package includes inpatient and outpatient services meeting the definition of emergency services, which shall be provided without regard to prior authorization or the provider's contractual relationship with the MCO. If the services are needed immediately and the time necessary to transport the member to a network provider would mean risk of permanent damage to the member's health, emergency services shall be available through a facility or provider participating in the MCO/SE network or from a facility or provider not participating in the MCO/SE network. Either provider type shall be paid for the provision of services on a timely basis. Emergency services include services needed to evaluate and stabilize an emergency medical or behavioral condition. Post-stabilization care services means covered services, related to an emergency medical or behavioral condition, that are provided after a member is stabilized in order to maintain the stabilized condition. This coverage may include improving or

resolving the member's condition if either the MCO has authorized post-stabilization services in the facility in question, or there has been no authorization; and

(1) the hospital was unable to contact the MCO; or

(2) the hospital contacted the MCO but did not get instructions within an hour of the request; the following provides additional information on covered services and required co-payments.

(a) Emergency health services can be provided in or out of the service area. Coverage is provided for trauma services at an appropriately designated trauma center according to established emergency medical services triage and transportation protocols.

(i) Prior authorization is not required for emergency care.

(ii) Coverage for trauma services and all other emergency health services from non-participating providers will continue at least until the member is medically stable, does not require critical care, and can be safely transferred to another facility based on the judgment of the attending participating provider in consultation with the MCO. The MCO may transfer hospitalized members to the care of participating providers as soon as it is medically appropriate. Such members shall be stabilized and the transfer effected in accordance with federal law.

(iii) The member is responsible for charges for non-covered services.

(b) Use of an urgent care center, where available, in or out of the service area for treatment of sudden unexpected acute illness or injury that requires prompt medical attention to prevent jeopardy to the member if such services were not received immediately.

(i) A non-participating urgent care center may be used only if the member cannot reasonably access a participating provider.

(ii) Routine or follow-up medical treatment shall be provided by or through a participating provider.

E. Women's health services: The benefit package includes any gynecological examinations or care related to pregnancy, for primary and preventive obstetrics, and gynecological services required as a result of any gynecological examination or condition. Covered women's health services may be obtained from the member's PCP, or a participating women's health care provider or a consulting provider to whom the member has been referred by her PCP. The following lists covered services and provides additional information:

- (1) office visits;
- (2) low-dose mammography screening for detection of breast cancer;
- (3) cytological screening to

determine the presence of pre-cancerous or cancerous conditions or other health problems; and

(4) services related to the diagnosis, treatment and appropriate management of osteoporosis.

F. Prenatal and post-partum care: Prenatal care includes a minimum of one prenatal office visit per month during the first two trimesters of pregnancy; two office visits per month during the seventh and eighth months of pregnancy; and one office visit per week during the ninth month until tremor as medically indicated, provided that coverage for each office visit shall include prenatal counseling and education.

(1) Following delivery of a newborn, a female member is entitled to either:

(a) post-partum care in the home consisting of up to three visits; or

(b) a minimum hospital stay of specified inpatient hours; the choice of either home care or inpatient care will be made based on discussion between the participating provider and the member.

(2) If post-partum home care is elected, the care shall be rendered in accordance with accepted maternal and neonatal physician assessments, and by a home care participating provider who is properly licensed, trained and experienced. A maximum of three home care visits are allowable.

(3) If inpatient care is elected, a mother and her newborn child in a health care facility will be entitled to a minimum stay of 48 hours following a vaginal delivery or 96 hours following a caesarian section.

(4) Non-hospital births - prior authorization is required.

G. Preventive health services: The benefit package includes preventive health services. Preventive health services are provided to a member when performed by or under the direction of the member's PCP or a participating provider to whom the member has been referred by his PCP, and are consistent with the MCO's preventive health guidelines. The following lists covered services and provides additional information.

(1) Physical exams, including health appraisal exams, laboratory and radiological tests, hearing and vision screenings, and early detection procedures.

(2) Periodic tests to determine blood hemoglobin, blood pressure, blood glucose level, and blood cholesterol level or a fractionated cholesterol level.

(3) Periodic glaucoma eye tests for all persons 35 years of age and older.

(4) Periodic stool examination for the presence of blood for all persons 40 years of age or older.

(5) Periodic mammograms for

detection of breast cancer as follows: one low dose baseline mammogram for women ages 35 through 39, one low dose mammogram biennially for women ages 40 through 49 and one low dose mammogram annually for women over age 50.

(6) All members may receive an annual consultation to discuss lifestyle behaviors that promote health and well-being. The consultation may include, but not be limited to:

- (a) smoking control;
- (b) nutrition and diet recommendations;
- (c) exercise plans;
- (d) lower back protection;
- (e) immunization practices;
- (f) breast self-examinations;
- (g) testicular self-examinations; or
- (h) use of seat belts in motor vehicles.

(7) Adult immunizations in accordance with the recommendations of the advisory committee on immunization practices (ACIP).

(8) Periodic colon examination of 35 to 60 centimeters or barium enema for all persons 45 years of age or older.

(9) Voluntary family planning services.

(10) Insertion of contraceptive devices.

(11) Removal of contraceptive devices.

(12) Surgical sterilization.

(13) Pregnancy termination procedures: The benefit package includes services for the termination of pregnancy and pre or post-decision counseling or psychological services as detailed in 8.325.7 NMAC, *Pregnancy Termination Procedures*.

H. Dialysis: The benefit package includes dialysis services. Long-term hemodialysis and continuous ambulatory peritoneal dialysis (CAPD) is provided with a prior authorization and performed by or under the direction of the member's PCP or a consulting provider to whom the member has been referred by his PCP. The member shall advise the MCO of the date the treatment commenced.

I. Inpatient physical rehabilitation: The benefit package includes inpatient physical rehabilitation. The following lists covered services and provides additional information.

(1) Inpatient physical rehabilitation services require prior authorization, and services are to be provided under the direction of the member's PCP or a consulting provider to whom the member is referred by his PCP.

(2) Inpatient physical rehabilitation facility coverage is limited to 25 days per benefit year. This 25-day limitation is combined with inpatient hospital and home health services.

J. Home health services/home intravenous services: The benefit package includes home health services, which are health services provided to a member confined to his home due to physical illness. The following lists covered services and provides additional information.

(1) Home health services and home intravenous services are provided by a home health agency (HHA) at a member's home with a prior authorization and prescribed by the member's PCP or a consulting provider to whom the member is referred by his PCP.

(2) Home health services in lieu of hospitalization are limited to 25 days per benefit year provided that a period of inpatient hospitalization coverage shall precede any home health care coverage or the PCP shall provide a statement indicating that inpatient hospitalization would be necessary in the absence of home health services. This 25 day limitation is combined with inpatient hospitalization and inpatient physical rehabilitation.

(3) Services provided by a registered nurse or a licensed practical nurse; by physical, occupational, and respiratory therapists; speech pathologists; or by a home health aide are covered.

(4) Prescription supplies for the provision of home health services at the time of a home health visit are covered.

(5) Home intravenous services are covered.

(6) Tube feedings as the sole source of nutrition are covered.

K. Durable medical equipment, medical supplies, orthotic appliances and prosthetic devices: The benefit package includes durable medical equipment, medical supplies, orthotic appliances, and prosthetic devices. The following lists covered services and provides additional information.

(1) Prior authorization is required.

(2) Durable medical equipment, medical supplies, orthotic appliances and prosthetic devices with allowable charges of \$200 or more per item, including tax and any shipping charges are covered. Rental price cannot exceed purchase price.

(3) Durable medical equipment that requires a provider's prescription for purchase or rental is covered unless otherwise excluded.

(4) Medical supplies that require a provider's prescription for purchase are covered unless otherwise excluded.

(5) Orthotic appliances that require a provider's prescription for purchase are covered unless otherwise excluded.

(6) Prosthetic devices are covered only when they replace a limb or other part of the body after accidental or surgical removal or when the body's growth or atrophy necessitates replacement, unless otherwise excluded.

(7) Breast prostheses and bras required in conjunction with reconstructive surgery are covered, except as limited.

(8) Repair or replacement of durable medical equipment, orthotic appliances and prosthetic devices due to normal wear or when necessitated by the body's growth or atrophy are covered.

L. Ambulance services: The benefit package includes emergency transport services identified below.

(1) When necessary to protect the life of the mother or infant, emergency transport includes transport for medically high-risk pregnant women with an impending delivery to the nearest tertiary care facility.

(2) The MCO will not pay more for air ambulance than it would have paid for transportation over the same distance by surface emergency medical transportation services unless the member's health condition renders the utilization of such surface services medically inappropriate.

(3) Emergency ground ambulance transportation to the nearest facility where emergency care and treatment can be rendered and when provided by a licensed ambulance service

(4) Emergency, trauma-related air ambulance transportation - prior authorization is required, when feasible.

M. Oral surgery: The benefit package includes limited oral surgery benefits with prior authorization. The following lists covered services and provides additional information. General dental and oral surgery services with a prior authorization only in conjunction with:

(1) Accidental injury to sound natural teeth, the jawbones, or surrounding tissues, treatment for injury is covered when initial treatment for the injury is sought within 72 hours of the injury. Teeth with crowns or restorations are not considered to be sound natural teeth. The injury shall be properly documented during the initial treatment. Services shall be completed within 12 months of the date of injury. The MCO will require dental x-rays.

(2) Surgical procedures to correct non-dental, non-maxillo-mandibular physiologic conditions that produce demonstrable impairment of function are covered.

(3) Removal or biopsy, when pathological examination is required of tumors and cysts of the jaws, cheeks, lips, tongue, roof and floor of the mouth are covered.

(4) External incision and drainage of cellulitis; incision of infected accessory sinuses, salivary glands or ducts; and removal of stones from salivary ducts are covered.

(5) Surgical procedures to correct accidental injuries of the jaws and facial

bones, cheeks, lips, tongue, roof and floor of mouth are covered.

N. Reconstructive surgery: The benefit package includes reconstructive surgery as provided below.

(1) Reconstructive surgery from which an improvement in physiological function can be expected if performed for the correction of functional disorders - prior authorization is required. Functional disorder shall result from accidental injury or from congenital defects or disease.

(2) Prosthetic devices and reconstruction surgery of the affected breast or other breast to produce symmetry related to mastectomy. This coverage includes physical complications at all stages of mastectomy, including lymph edemas. A member is allowed at least 48 hours of inpatient care following mastectomy and 24 hours of inpatient care following a lymph node dissection for the treatment of breast cancer.

O. Prescription drugs: The benefit package includes all generic prescription drugs and brand name drugs included on the MCO's preferred drug list (PDL). Exceptions to the PDL depend on MCO policy.

P. Diabetes treatment: The benefit package includes diabetes treatment. The MCO will maintain an adequate PDL to provide resources to members with diabetes; and guarantee reimbursement or coverage for prescription drugs, insulin, supplies, equipment and appliances with a prior authorization described in this subsection within the limits of the MCO. The following lists covered services and provides additional information.

(1) Equipment, supplies and appliances to treat diabetes to include:

(a) blood glucose monitors, including those for the legally blind;

(b) test strips for blood glucose monitors;

(c) visual reading urine and ketone strips;

(d) lancets and lancet devices;

(e) insulin (limit two vials per co-payment);

(f) injection aids, including those adaptable to meet the needs of the legally blind;

(g) syringes;

(h) prescriptive oral agents for controlling blood sugar levels;

(i) medically necessary podiatric appliances for prevention of foot complications associated with diabetes, including therapeutic molded or depth inlay shoes, functional orthotic appliances, custom molded inserts, replacement inserts, preventive devices and shoe modifications for prevention and treatment; and

(j) glucagons emergency kits.

(2) Diabetes self-management

training by a certified, registered or licensed health care professional with recent education in diabetes management, which is limited to:

(a) medically necessary visits upon the diagnosis of diabetes;

(b) visits following a provider diagnosis that represents a significant change in the member's symptoms or condition that warrants changes in the member's self-management;

(c) visits when re-education or refresher training is prescribed by a health care provider with prescribing authority; and

(d) medical nutrition therapy related to diabetes management.

Q. Behavioral health and substance abuse services: The benefit package includes behavioral health and substance abuse services. Inpatient behavioral health services are limited to 25 days per benefit year with prior authorization.

(1) **Behavioral health service:**

(a) Outpatient office visits for mental health evaluation and treatment; injectable forms of haloperidol or fluphenazine are included in the office visit co-payment. Prior authorization is required for over seven [(7)] visits.

(b) Inpatient mental health services provided in a psychiatric hospital or an acute care general hospital - *prior authorization is required.*

(2) **Substance abuse service:**

(a) outpatient substance abuse including visits, detoxification and intensive outpatient care limited to 42 days per benefit year; and

(b) inpatient substance abuse detoxification - *prior authorization is required.*

R. Annual limits on out-of-pocket expenditures: Out-of-pocket charges for all participants will be limited to five percent of maximum gross household income per benefit year. [~~Pharmacy out-of-pocket charges for all participants will be limited to \$12 per month.~~]

S. Limitations on coverage: The benefit package is limited to \$100,000 in benefits payable per member per benefit year. The state may adjust the \$100,000 maximum per benefit year; however the maximum per benefit year cannot be decreased more than five percent in a single year and the maximum per benefit year cannot be adjusted to an amount less than \$100,000. The state must notify CMS 60 days prior to any requested change in the maximum per benefit year.

T. Pregnancy termination procedures: The MCO shall provide coverage of pregnancy termination as allowed per 42 CFR 457.475. Medically necessary pregnancy terminations which do not meet the requirements of 42 CFR 457.475 are excluded from the capitation

payment made to the MCO and shall be reimbursed solely from state funds pursuant to the provisions of 8.325.7 NMAC.

[8.306.7.11 NMAC - N, 7-1-05; A, 4-16-07; A, 6-1-08; A, 7-1-09; A, 6-1-10]

8.306.7.12 COVERED SERVICES AND SERVICE LIMITATIONS:

The SCI benefit package is limited to \$100,000 in benefits payable per member per benefit year. Covered services are subject to the following conditions and limitations:

A. Medically necessary: Medically necessary services are clinical and rehabilitative physical, mental or behavioral health services that:

(1) are essential to prevent, diagnose or treat medical conditions or are essential to enable the individual to attain, maintain or regain functional capacity;

(2) are delivered in the amount, duration, scope and setting that is clinically appropriate to the specific physical, mental and behavioral health care needs of the individual;

(3) are provided within professionally accepted standards of practice and national guidelines; and

(4) are required to meet the physical, mental and behavioral health needs of the individual and are not primarily for the convenience of the individual, the provider or the payer.

B. Behavioral health and substance abuse services:

(1) Inpatient mental health services/partial hospitalizations are limited to 25 days per benefit year.

(2) Inpatient substance abuse detoxification is limited to 72 hours per occurrence as part of the total 25 day benefit for inpatient mental health services.

(3) Outpatient substance abuse detoxification services are limited to [ten] 10 days per benefit year. Substance abuse outpatient services including intensive outpatient services are limited to 42 days per benefit year.

C. Cardiovascular rehabilitation: Coverage for cardiovascular rehabilitation is limited to a maximum of 36 sessions per cardiac event.

D. Choice of provider: For the purpose of coverage under this policy, the SCI MCO has the right to determine which provider may be used to provide the covered services.

E. Contact lenses or eyeglasses following cataract surgery: One complete set of contact lenses or eyeglasses is covered following surgery for the removal of cataracts from one or both eyes. Coverage is not allowed for both contact lenses and eyeglasses. Coverage is limited to one set of contact lenses or eyeglasses per member per surgery. Coverage for materials (contact

lenses or eyeglasses) is limited to \$300 per surgery. Coverage for contact lenses or eyeglasses is limited to 90 days following surgery for the removal of cataracts. Contact lenses or eyeglasses obtained after the 90 day period are not covered.

F. Dental services: In cases of accidental injury to sound natural teeth, the jawbones, or surrounding tissues, treatment for injury is covered when initial treatment for the injury is sought within 72 hours of the injury. Teeth with crowns or restorations are not considered to be sound natural teeth. The injury shall be properly documented during the initial treatment. Services shall be completed within 12 months of the date of injury. The MCO will require dental x-rays.

G. Detoxification: Inpatient detoxification is limited to 72 hours of inpatient services per occurrence as part of the 25 day benefit for inpatient behavioral health services. Outpatient detoxification is limited to ~~[ten]~~ 10 days per benefit year.

H. Home health services: Home health services in lieu of hospitalization, or a combination of inpatient hospitalization, home health services and inpatient rehabilitation, may not exceed 25 days per benefit year, provided that a period of inpatient hospitalization coverage shall precede any home health care coverage or the PCP shall provide a statement indicating that inpatient hospitalization would be necessary in the absence of home health services. Home health services are subject to periodic review of the continuation of covered services. If home health services can be provided in more than one medically appropriate setting, the MCO may choose the setting for providing the care.

I. Inpatient hospitalization, home health services, inpatient rehabilitation: This policy is limited to maximum of 25 combined days per member per benefit year for inpatient hospitalization, home health services and inpatient rehabilitation.

J. Major disasters: In the event of any major disaster, epidemic, or other circumstance beyond its control, the MCO will render or attempt to arrange covered services with participating providers insofar as practical according to its best judgment and within the limitations of facilities, supplies, pharmaceuticals, and personnel available. Such circumstances include: complete or partial disruption of facilities; war; riot; civil uprising; disability of the MCO personnel; disability of participating providers; or act of terrorism.

K. Maximum benefit limits: Maximum benefits allowed under SCI are limited to \$100,000 per member per benefit year. The state may adjust the \$100,000 maximum per benefit year; however the maximum per benefit year

cannot be decreased more than five percent in a single year and the maximum per benefit year cannot be adjusted to an amount less than \$100,000. The state must notify CMS 60 days prior to any requested change in the maximum per benefit year.

L. Maternity transport: Coverage for transportation where medically necessary to protect the life of the infant or mother, including air transport if indicated for medically high risk pregnant women with an impending delivery of a potentially viable infant to the nearest available tertiary care center.

M. Mastectomy and lymph node dissection: Length of inpatient stay: not less than 48 hours inpatient stay following a mastectomy and not less than 24 hours of inpatient care following a lymph node dissection when determined medically appropriate by physician and patient.

N. Orthotic appliances and prosthetic devices: Repair or replacement of orthotic appliances and prosthetic devices due to normal wear is covered.

O. Physical, speech and occupational therapy: Only short-term rehabilitative services are covered. Short-term therapy is limited to no more than two consecutive months per member per condition.

P. Post mastectomy supplies: Bras required in conjunction with reconstructive surgery are limited to two per member, per benefit year.

Q. Prescription drugs: Prescription drugs are limited to generic drugs and name brand prescriptions on the preferred drug list (PDL) drugs as listed on the MCO PDL. The MCO shall ensure that Native American members accessing prescription drugs at IHS or tribal 638 facilities will be exempt from the MCO's PDL. For each co-payment amount, quantities are limited to a 30-day supply or 100 tablets; whichever is less, per prescription or refill. All other units will be dispensed in a 30-day supply, with one co-payment required for each of the following quantities:

(1) **Topical products:** The lesser of 80 gm. of cream/ointment or 60 ml. of lotion/solution or the most commonly dispensed trade package size, per co-payment.

(2) **Oral liquids:** 480 ml. maximum per co-payment.

(3) **Inhalers and vials:** One co-payment per unit (diabetic insulin exception - two vials of the same type of insulin per co-payment).

(4) **Manufacturer's trade package:** One co-payment per trade package (i.e. imitrex, estrogen patches).

(5) **Mail order drugs** are limited to drugs available through the MCO's mail

order distributor.

R. Transplants - organ, bone marrow, or tissue:

(1) Organ, bone marrow, or tissue transplants are limited to:

- (a) heart;
- (b) heart/lung;
- (c) lung;
- (d) liver;
- (e) cornea;
- (f) kidney;
- (g) skin;
- (h) bone marrow (allogenic

and autologous stem cell rescue only for leukemia, aplastic anemia, severe combined immunodeficiency disease, wiskott-aldrich syndrome, advanced hodgkin's or non-hodgkin's lymphoma, recurrent or refractory neuroblastoma, and multiple myelomas); or

(i) pancreas (for uremic, insulin-dependent diabetics concurrently receiving a kidney transplant).

(2) No other transplant procedures are covered. The MCO has the right to require that transplants be performed at contracted centers of excellence if one is available.

(3) A member is eligible for coverage for up to two transplants per lifetime. Multiple organ, bone marrow, or tissue transplants performed at the same time are considered to be one procedure. All transplant services are limited by the \$100,000 annual benefit limitation per member per benefit year.

[8.306.7.12 NMAC - N, 7-1-05; A, 7-1-09; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.8 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.8.3 S T A T U T O R Y AUTHORITY:

New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.8.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.8.4 DURATION: The SCI program is operated subject to continuation

of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.8.4 NMAC - N, 7-1-05; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.9 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.9.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.9.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.9.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.9.4 NMAC - N, 7-1-05; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.10 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.10.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.10.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.10.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.10.4 NMAC - N, 7-1-05; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.306.11 NMAC, Sections 3, 4 and 9, effective June 1, 2010.

8.306.11.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.11.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.11.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.11.4 NMAC - N, 7-1-05; A, 6-1-10]

8.306.11.9 REIMBURSEMENT:

A. MCO and HSD shall comply with 8.305.11.9 NMAC, *reimbursement for managed care* for the SCI program with the exception of SCI members who are hospitalized at the time of disenrollment from SCI (see below Subsection B of 8.306.11.9 NMAC). Rates negotiated between HSD and the MCO are considered confidential.

B. **SCI members who disenroll while hospitalized:** If the member is hospitalized at the time of disenrollment from SCI, or upon an approved switch from one SCI contractor to another, the contractor at the time of admission remains responsible for all covered or approved services until the earliest of: the date of discharge, date of switch to another contractor, date of the member's termination/disenrollment or until the maximum benefit limits are reached.

C. **Payment of premiums:** In addition to capitation payments from HSD, the MCO shall receive premium payments as specified by HSD. Premiums will be paid as follows:

(1) **employer premium** amount determined by department; and

(2) **employee or individual premium** determined by department based on the federal poverty limits as follows: 0-100 percent per month, 101-150 percent per month, 151-200 percent per month,

D. **Premium timeframes:** Initial premiums are due to the MCO immediately upon enrollment and prior to the 1st day of the month before coverage

begins. An employer group or individual member can only receive coverage when the premium has been paid. Capitation payments will not be paid unless verification of premium payment through the roster is received. If payment is not current within that timeframe, the employer group or individual member will not be covered for the next month and will not be able to enroll in an SCI MCO for a period of [twelve] 12 months for an employer group or six months for an individual member.

E. **Responsibility for premium payment:** For members in an employer group, the employer shall be responsible for ensuring payment of the employer and employee share (if any) of premiums. For individuals who are not affiliated with an employer group, the individual or an entity paying on behalf of an individual [shall] may be responsible for payment of both the employer and individual premium amount (if any). If a member who is part of an employer group has met the cost-sharing maximum, as verified by the MCO, HSD shall be responsible for payment of the member's; but not the employer's share of premiums. For individual members not in an employer group who have met the cost-sharing maximum, HSD shall be responsible for the member's share of the premium. The member will continue to be responsible for the employer's share of the premium, when required.

[8.306.11.9 NMAC - N, 7-1-05; A, 3-1-06; A, 4-16-07; A, 7-1-09; A, 6-1-10]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment for 8.306.12 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.12.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.12.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.12.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.12.4 NMAC - N, 7-1-05; A, 6-1-10]

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

This is an amendment to 8.306.13 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.13.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the SCI program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.13.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.13.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.13.4 NMAC - N, 7-1-05; A, 6-1-10]

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

This is an amendment to 8.306.14 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.14.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the SCI program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.14.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.14.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.14.4 NMAC - N, 7-1-05; A, 6-1-10]

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

This is an amendment to 8.306.15 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.15.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.15.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.15.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.15.4 NMAC - N, 7-1-05; A, 6-1-10]

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

This is an amendment to 8.306.16 NMAC, Sections 3 and 4, effective June 1, 2010.

8.306.16.3 STATUTORY AUTHORITY: New Mexico Statutes Annotated, 1978 (Chapter 27, Articles 1 and 2) authorize the state to administer the medicaid program. The State Coverage Insurance (SCI) program is authorized under a health insurance flexibility and accountability (HIFA) waiver under section 1115 of the Social Security Act for the parent population and a medicaid demonstration waiver under section 1115 for the childless adult population, both subject to special terms and conditions.

[8.306.16.3 NMAC - N, 7-1-05; A, 6-1-10]

8.306.16.4 DURATION: The SCI program is operated subject to continuation of the state's HIFA waiver and the medicaid demonstration waiver, and subject to availability of funds.

[8.306.16.4 NMAC - N, 7-1-05; A, 6-1-10]

**NEW MEXICO JUVENILE
PUBLIC SAFETY
ADVISORY BOARD**

This is an amendment to 22.510.100 NMAC, Sections 7 through 13, effective June 1, 2010.

22.510.100.7 DEFINITIONS: In these definitions, all references to males are understood to include females. As used in these regulations:

A. "Administrative review" means a review conducted by the director or ~~[other designated juvenile public safety advisory board hearing officer as authorized by the chairperson]~~ designee.

B. "Agenda" means the list of juvenile offenders who are to be considered for supervised release at the department's regular release consideration meetings.

C. "Board" means the juvenile public safety advisory board whose members are appointed pursuant to the Juvenile Public Safety Advisory Board Act, 1978 NMSA Sections 32A-7A-1 to 32A-7A-8.

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

E. "Director" means the administrative officer of the juvenile public safety advisory board appointed by the governor; the director shall employ other staff as necessary to carry out the administrative duties of the board.

F. "Facility" refers to a facility operated by or on behalf of CYFD's juvenile justice services for purposes of housing and providing care and rehabilitation for clients committed to the custody of CYFD.

G. "Facility release panel (panel)" is the departmental secretary-designated releasing authority that considers juveniles for supervised release.

H. "Facility transition coordinator (FTC)" means a department employee who works with the client and the client's multi-disciplinary team, juvenile probation officer, classification officer and regional transition coordinator to coordinate the client's care while in the facility and ensures that the required tasks of the client's supervised release or extension track are occurring in a timely manner.

~~**I. "Hearing officer"** means an employee of the board charged with carrying out approved duties of the board.~~

J. L. "Home study" means the assessment conducted by the department of the living environment where the juvenile offender may reside during the

term of supervised release; ~~[the assessment is conducted by the department]~~ specific strengths and weaknesses of the living environment are identified through the home study process.

[K.] J. “Juvenile offender” means a child committed to the custody of the department pursuant to the Delinquency Act, 1978 NMSA Section 32A-2-1 through 32A-2-32; the term “juvenile offender” in this regulation includes those individuals who are committed as youthful offenders.

K. “Quorum” is a minimum number of members of a board who must be present to make decisions; for purposes of board participation in facility release panel meetings and hearings, quorum means at least one member of the board.

L. “Release consideration meeting” means a proceeding conducted by the panel for purposes of deciding whether to grant, deny, defer or revoke supervised release.

M. “Release plan” means the department’s recommendation for the conditions the juvenile offender should be required to fulfill if released, and presents workable methods of dealing with the juvenile offender’s problems and needs throughout the community intervention.

N. “Release agreement” means the conditions of supervised release as established by the panel. The juvenile is required to agree in writing to the conditions as a prerequisite to being placed on release status.

O. “Secretary” means the secretary of the children, youth and families department.

P. “Structured decision making (SDM)” means a system designed for use in case management of the juvenile population, and used by the department in the classification of committed juvenile offenders.

Q. “Supervised release” refers to the release of a juvenile, whose terms of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the terms of commitment has expired, and may be returned to custody for violating conditions of release.

R. “Supervised release plan” means the department’s recommendation for the conditions the juvenile offender should be required to fulfill if released and presents workable methods of dealing with the juvenile offender’s problems and needs through community intervention.

S. “Supervised release

recommendation report” is the report prepared by the FTC/designee to inform the panel of the juvenile’s progress while committed and the juvenile’s readiness for release through summaries of all the disciplines in the juvenile’s plan of care and the plan for the juvenile if he or she is granted supervised release.

[22.510.100.7 NMAC - Rp, 22.510.100.7 NMAC, 10/30/09; A, 6/1/10]

22.510.100.8 ADMINISTRATIVE REVIEWS

A. Administrative review. At intervals, the director or ~~[a hearing officer designated as hearing officer]~~ designee reviews the juvenile offender’s progress or lack thereof. The administrative review may be based solely on documentation. Whenever possible, it is preferable for the administrative review to include an interview with the juvenile offender at the facility where he or she is housed.

(1) The first administrative review must occur not later than forty days after the date that the juvenile offender is committed to the department’s custody, and may occur at the juvenile’s initial MDT.

(2) Subsequent administrative reviews occur at regular intervals thereafter, until such time as the juvenile offender is placed on the agenda for a release ~~[hearing]~~ meeting, or is otherwise discharged.

B. After each administrative review, the ~~[staff]~~ director or designee prepares a report of the juvenile offender’s progress with recommendation as to readiness for supervised release. The reports are compiled and provided to board members prior to a juvenile’s appearance at a release consideration meeting. Any board member may direct the ~~[staff]~~ director or designee to obtain additional information regarding any child at any time, and may review the case of any child at any time. ~~[Staff]~~ The director or designee also provides copies of the board’s reviews to the facilities, with any recommendations, ~~[also]~~ prior to a juvenile’s appearance at a release consideration meeting.

[22.510.100.8 NMAC - Rp, 22.510.100.8 NMAC, 10/30/09; A, 6/1/10]

22.510.100.9 FACILITY VISITS AND OTHER DUTIES

A. At least once per year, the board visits each departmental facility for purposes of evaluating the conditions of the facilities and any other matters pertinent to the care of committed juveniles.

B. After the board visits the department’s facilities, it shall prepare a written report on the conditions found, including recommendations for programs and facilities. The report shall be provided to:

(1) the secretary of the children,

youth and families department;

(2) the director of the juvenile justice division; and

(3) the governor.

C. At least twice per year, the board meets with the secretary or the secretary’s designee to review the activities of the department.

D. A quorum of the board participates in regular and special release consideration meetings and final supervised release revocation hearings. ~~[At the hearings the quorum confers on decisions and votes.]~~ [22.510.100.9 NMAC - N, 10/30/09; A, 6/1/10]

22.510.100.10 INFORMATION REQUIRED FOR BOARD PARTICIPATION IN RELEASE DECISIONS: In order for the board to effectually participate in release panel decisions, the board obtains information on the juvenile being considered for release from the facilities.

A. For the initial administrative review (the forty day review), the ~~[board]~~ director or designee attends the juvenile’s initial MDT at the facility to obtain the following information:

(1) a complete history of the juvenile offender’s delinquent acts and any resulting consequences;

(2) the juvenile offender’s family history;

(3) the juvenile offender’s social history;

(4) the juvenile offender’s academic, vocational and educational history;

(5) the juvenile offender’s psychological and psychiatric history, including all diagnostic center reports;

(6) relevant medical reports for the juvenile offender;

(7) the commitment order for the current commitment and petition;

(8) the pre-disposition report for the current commitment;

(9) the facility’s plan for care and rehabilitation;

(10) the facility’s identification sheets or case record sheets;

(11) designation of home study recipient; and

(12) the juvenile offender’s social security number.

B. After the initial administrative review, the ~~[board]~~ director or designee reviews the juvenile’s FACTS entries and as necessary, contacts the juvenile’s classification officer or other facility staff familiar with the juvenile or visits the juvenile as necessary to obtain the following information:

(1) monthly or bi-monthly progress reports and SDM scores, including reports and SDM scores on those juvenile

offenders who are in programs outside the facility;

(2) psychological and psychiatric reports and evaluations on the juvenile offender, including for juvenile offenders who are in programs outside the facility;

(3) home studies and any facility requests for home studies;

(4) a current and updated facility face sheet;

(5) any court-ordered restitution payment plan or social restitution plan;

(6) a wilderness and urban experience evaluation report if applicable;

(7) ~~[special incident reports, such as reports of the juvenile offender having been placed in a crisis intervention unit or adjustment unit;]~~ serious incident reports;

(8) any information relating to an out-of-state supervised release plan, as required by interstate compact provisions;

(9) all information pertaining to furloughs, passes, transfers and pre-supervised releases; and

(10) any special reports that the board may request.

C. Thirty days prior to the regularly-scheduled release meeting, the board obtains an updated supervised release recommendation report from the facility for each juvenile offender on the agenda. For special ~~[parole hearings or for the]~~ release meetings or for juvenile offenders who are added to the agenda, the board receives the updated supervised release recommendation report as soon as practicable.

[22.510.100.10 NMAC - Rp, 22.510.100.19 NMAC, 10/30/09; A, 6/1/10]

22.510.100.11 SUPERVISED RELEASE CONSIDERATION MEETINGS:

The board participates in release consideration ~~[meeting]~~ meetings held by the department, including revocation hearings, and internally confers on release or revocation decisions prior to or at meetings. The board is not required to meet in person to internally confer on release or revocation decisions, as long as each board member provides input on what the board's vote should be at the release consideration meeting or revocation hearing. After conferring, a majority of the board's members must agree to the vote to be given at the meeting or hearing for each juvenile on the agenda. A quorum of the board then attends each regular and special release consideration meeting or revocation hearing and provides one vote. ~~[At the meetings, the quorum confers on decisions and votes.]~~ The board also advises the department on criteria to be used to decide whether to release a juvenile. [22.510.100.11 NMAC - N, 10/30/09; A, 6/1/10]

22.510.100.12 CONFIDENTIALITY: All juvenile records in the possession

of the board or its staff are maintained ~~[confidential]~~ confidentially in accordance with 1978 NMSA Section 32A-2-32.

[22.510.100.12 NMAC - Rp, 22.510.100.20 NMAC, 10/30/09; A, 6/1/10]

22.510.100.13 DIRECTOR DUTIES:

The director of the board is not an ex-officio member of the board and does not vote in board decisions, including any decisions related to the facility release panel. The director shall support the board and other board members by providing budget administration, inclusive of travel and per diem support to board members; guiding the board in preparing for facility release panel meetings and bi-annual meetings with the secretary; coordinating the board's efforts in developing an annual report to the governor's office; managing any specific requests for information from board members relating to information about agency services and programs or specific youth scheduled to appear before the facility release panel; assisting the office of the secretary in recruiting and nominating potential board members to fill vacant positions, as needed; and other duties as requested by the board.

[22.510.100.13 NMAC - N, 6/1/10]

NEW MEXICO PUBLIC EMPLOYEES RETIREMENT ASSOCIATION

This is an emergency amendment to 2.80.600 NMAC, Section 10, effective May 28, 2010

2.80.600.10 GENERAL PROVISIONS

A. Service shall be credited to the nearest month.

(1) Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office or terminates employment on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

(2) A member who is a full-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member is paid 50% or more of his or her monthly salary as reported by the member's affiliated public employer.

(3) If a member who is a full-time employee of an affiliated public employer is paid less than 50% of the member's monthly salary as reported by the member's affiliated public employer, employer and member contributions shall be paid on any salary

paid during that month, and the member contributions shall be posted to the member's individual member contribution account, but no service credit shall be acquired for that month, even if unpaid leave was taken pursuant to the Family Medical Leave Act.

(4) A member who is a part-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member works twenty (20) or more hours per week, totaling forty (40) or more hours in an eighty hour pay period as reported by the member's affiliated public employer. A part-time employee is an employee who works forty (40) or more hours but less than eighty (80) hours in an eighty (80) hour pay period or twenty (20) or more hours but less than forty (40) hours in a week. Notwithstanding any other provision of 2.80.600.10 NMAC, part-time employees who normally work at least twenty (20) hours in a week and who were furloughed pursuant to executive order issued between July 1, 2009 and June 30, 2010 shall acquire one month of service credit for each month affected by a furlough day. This amendment was adopted as an emergency rule to allow part-time employees to acquire service credit they would otherwise be eligible for absent the executive order. Immediate adoption of this amendment is necessary for the general welfare of the association.

B. A part-time employee who works fewer than forty (40) hours in an eighty (80) hour pay period or fewer than twenty (20) hours in a forty (40) hour week shall be exempt from membership by filing a PERA exclusion from membership form pursuant to 2.80.400.40 NMAC.

C. If a member has an incomplete contract to purchase service credit at the time of termination of employment, the contract must be paid in full within thirty (30) days of termination or the amount already paid under the contract will be refunded and no corresponding service credit will be granted.

D. Overlapping service credit.

(1) If a member has service credit for the same period of time for employment by public employers covered under different state systems, service credit may only be acquired under one state system for the period of overlapping service credit. In no case shall a member be credited with more than one month of service credit for all service in any calendar month.

(2) If a member accrues service credit under PERA and another state system for an overlapping period, the member shall be granted service credit for this overlapping period in accordance with all applicable statutes and rules that provide for the highest pension factor.

[10-15-97; 11-15-97; 12-15-99; 2.80.600.10

NMAC - Rn, 2 NMAC 80.600.10, 8-15-01; A, 9-30-03; A/E, 5-28-10]

NEW MEXICO DEPARTMENT OF PUBLIC SAFETY

TRAINING AND RECRUITING DIVISION

Law Enforcement Academy

This is an amendment to 10.29.1 NMAC, Section 11, effective 6/17/2010.

10.29.1.11 G R O U N D S FOR DENIAL, REVOCATION OR SUSPENSION OF POLICE OFFICER OR TELECOMMUNICATOR CERTIFICATION; REPORTING REQUIREMENTS

A. Authority - In accordance with the provisions of the Law Enforcement Training Act, NMSA 1978, Section 29-7-13 (Repl. Pamp. 1994), the director may seek to deny, suspend or revoke a police officer's certification, if after investigation, and consultation with the employing agency, it is determined that a police officer has failed to comply with the provisions of the Law Enforcement Training Act concerning qualifications for certification as a police officer in the state of New Mexico.

B. Grounds for police officer - The following conduct by a certified police officer may constitute grounds for denial, suspension or revocation of certification under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances, or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects an officers ability to exercise ~~[his or her]~~ the duties [as] of a certified law enforcement officer; and

(5) committing acts of violence or brutality which indicate that the officer has abused the authority granted to him or her as a commissioned law enforcement officer in the state of New Mexico;

(6) is found to have committed acts which would be grounds for denial of

application for admission under 10.29.1.10 NMAC.

C. Grounds for telecommunicator - The following conduct by a certified telecommunicator may constitute grounds for denial, suspension or revocation of certification under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects an telecommunicator's ability to exercise ~~[his or her]~~ the duties [as] of a certified telecommunicator; and

(5) committing acts which indicate that the telecommunicator has abused the authority granted to ~~[him or her as]~~ a certified telecommunicator in the state of New Mexico;

(6) is found to have committed acts which would be grounds for denial of application for admission under 10.29.1.10 NMAC.

D. Reports - Any agency employing a certified law enforcement officer or telecommunicator who has committed any act or acts identified in Subsection B or C of 10.29.1.11 NMAC shall report such conduct to the director within thirty (30) days~~[-The director will establish a reporting form to be completed by the agency. An agency's delay or failure to report such conduct does not divest the board of jurisdiction to take action under NMSA 1978, Section 29-7-13 and NMSA 1978 Section 29-7C-9.] of completing an investigation confirming the alleged misconduct. In every case, alleged misconduct shall be reported to the director if an investigation is ongoing ninety (90) days after the agency receives the initial report of misconduct. An officer or telecommunicator's resignation or termination from employment does not relieve the agency from its duty to file a misconduct report with the academy. All incidents of misconduct shall be reported when a certified officer or telecommunicator is in violation of 10.29.1.11 NMAC. Law enforcement agencies should undertake a timely and thorough investigation to determine whether an allegation of misconduct has been sustained. For the purposes of this section, "misconduct" is defined as any act listed under section~~

10.29.1.11 NMAC, even if that act results in termination or resignation. The director will establish a reporting form to be used in reporting misconduct. An agency's delay or failure to report misconduct does not divest the board of jurisdiction to take action under Section 29-7-13 NMSA 1978 and Section 29-7C-9 NMSA 1978.

[4-11-93, 10-1-97, 1-1-99; 10.29.1.11 NMAC - Rn, 10 NMAC 29.1.11, 7/1/01; A, 01/01/04; A, 06/17/10]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

12.15.8 NMAC, Home Loan Protection Act - Approved Third Party, NonProfit Counselors (filed 01/23/2004) is hereby repealed 06/01/2010.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

This is an amendment to 12.15.3 NMAC Sections 7, 8, 9, 10, 11, 12, 13, 14 and 15, effective 06/01/10.

12.15.3.7 DEFINITIONS: For purposes of this rule, the definitions set forth in the act shall apply unless otherwise noted.

A. "Grossed up income" means income that is not taxable by the federal government and has been increased to reflect the amount of tax savings attributed to this type of income. The maximum amount of grossed up income allowable is twenty-five percent, but could be less based on the tax savings of the borrower. (Example: Non-taxable income is \$1000.00 per month. Assuming a tax savings of 25%, the allowable grossed up income would be \$1250.00 per month.)

B. "Scheduled long-term monthly debt payments" means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower's ability to repay per the current underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran's affairs (VA).

[12.16.3.7 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.8 ANNUAL PERCENTAGE RATE: The phrase “annual percentage rate” as used in Section ~~[58-21A-3(B) and (F)]~~ 58-21A-3 (C) and (G) NMSA 1978, has the same meaning as the term “annual percentage rate” defined in 15 U.S.C. Section 1606(a).
[12.15.3.8 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.9 PUBLISHED ANNUAL YIELD ON CONVENTIONAL MORTGAGES: The phrases “most recently published annual yield on conventional mortgages published by the board of governors of the federal reserve system as of the fifteenth day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor,” as used in Section 58-21A-3~~(E)~~ (F) NMSA 1978, and “conventional mortgage rate” as used in Section ~~[58-21A-3(B) and (F)(1)]~~ 58-21A-3 (C) (F) and (G) (1) NMSA 1978, refer to the ~~[federal home loan mortgage corporation (freddie mac) national mortgage homeowner commitment]~~ conventional mortgage index published in the federal reserve “selected interest rates” (statistical release H-15). The creditor must use the most recently published weekly yield immediately preceding the 15th.

[12.15.3.9 NMAC - N, 01/23/2004, A, 06/30/2004; A, 06/01/10]

12.15.3.10 CONFORMING LOAN SIZE LIMIT: The “conforming loan size limit for a single-family dwelling established by the federal national mortgage association,” referred to in Section 58-21A-3~~(F)~~ (J) NMSA 1978, is the maximum original principal obligation set forth in, and from time to time adjusted, according to the provisions of 12 U.S.C. Section 1454(a)(2), applicable to first mortgages. “The federal national mortgage association” refers to fannie mae, the corporation initially organized pursuant to 12 USC 1716(b).
[12.15.3.10 NMAC - N, 01/23/2004; A, 06/01/10]

12.15.3.11 POINTS AND FEES: The categories listed under the definition of “points and fees” in Section 58-21A-3~~(K)~~ (M) NMSA 1978, are not exclusive.
[12.15.3.11 NMAC - N, 01/23/2004; A, 06/01/10]

~~**12.15.3.12 OPEN-END LOAN:**~~ The term “open-end loan,” used in Section 58-21A-3~~(K)~~ (6) NMSA 1978, has the same meaning as the term “open-end credit,” defined in 12 CFR Section 226.2(a)(20).
12.15.3.12 RATE THRESHOLD: The phrase [“weekly

average yield on comparable United States treasury securities on the fifteenth day of the month immediately preceding the month in which the loan is made,”] “comparable periods of maturity,” as used in Section 58-21A-3~~(E)~~ (N) NMSA 1978, refers to the ~~[yield on actively traded issues adjusted to constant maturities]~~ “treasury constant maturities” published in the federal reserve “selected interest rates” (statistical release H-15).

A. Creditors must use the yield corresponding to the constant maturity that is closest to the loan’s maturity or the lower yield if the loan’s maturity is midway between constant maturities published in the statistical release. For example:

(1) if a mortgage loan has a term of at least 20 but less than 30 years, the rate threshold test uses the yield of securities having a constant maturity of 20 years;

(2) if a mortgage loan has a term of 30 years or more, and if the federal reserve statistical release does not provide a term equal to that same exact term of years, then the rate threshold test uses the yield of securities having a constant maturity of the next shortest fixed term listed in the statistical release;

(3) if the statistical release H-15 contains a yield for treasury securities with constant maturities of 7 years and 10 years and no maturity in between, the rate threshold test of an 8 year mortgage loan uses the yield of securities having a 7 year constant maturity, and the rate threshold test of a 9 year mortgage loan uses the yield of securities having a 10 year constant maturity;

(4) if the loan’s maturity is exactly halfway between security maturities, the rate threshold test on the loan should be compared with the yield for treasury securities having the lower yield; if a mortgage loan has a term of 15 years, and the statistical release H-15 contains a yield of 5.21 percent for constant maturities of 10 years, and also contains a yield of 6.33 percent for constant maturities of 20 years, then the creditor compares the rate for a 15 year mortgage loan with the lower yield for constant maturities of 10 years.

B. If the 15th day of the month immediately preceding the month in which the loan is made is not a ~~[Friday]~~ business day, the creditor must use the yield calculated as of the ~~[Friday]~~ business day immediately preceding the 15th.

C. A loan is considered “made,” within the meaning of Section 58-21A-3~~(E)~~ (N), NMSA 1978, when the consumer becomes contractually obligated on a credit transaction.

D. When calculating the interest rate for adjustable rate loans, the creditor shall not use any introductory rate. The interest rate will be based on the loan’s disclosed index plus the margin, which is

the fully indexed rate, at the time the loan is made. As an example, if the index is 2% and the margin is 3% for a first lien mortgage, the interest rate is 5% (fully indexed rate).

[12.15.3.12 NMAC - N, 01/23/2004; Repealed, 06/01/10; 12.15.3.12 NMAC - Rn, 12.15.3.13 NMAC & A, 06/01/10]

~~**12.15.3.14 CREDIT PROPERTY INSURANCE:**~~ For purposes of the act, the term “credit property insurance,” does not include fire and hazard insurance, flood insurance, federal housing administration (FHA) mortgage insurance, veteran’s administration (VA) loan guarantees, guaranteed rural housing (GRH) loan guarantees and private mortgage insurance that would compensate the holder of a home loan directly for any shortfall between the value of the real property securing the loan and the amount owed on an obligation in default.

[12.15.3.13 NMAC - N, 01/23/2004; A, 06/30/2004; 12.15.3.13 NMAC - Rn, 12.15.3.14 NMAC, 06/01/10]

~~**12.15.3.15 TOTAL PRINCIPAL LOAN AMOUNT:**~~ For purposes of the act, the term “total principal loan amount,” as used in Section 58-21A-3~~(N)~~ (Q) (1) and (2), NMSA 1978, refers to the total principal loan amount as stated in the promissory note.

[12.15.3.14 NMAC - N, 01/23/2004, A, 06/30/2004; 12.15.3.14 NMAC - Rn, 12.15.3.15 NMAC & A, 06/01/10]

12.15.3.15 “POINTS AND FEES” EXCLUSION FOR UPFRONT PREMIUM PRIVATE MORTGAGE INSURANCE: In reference to 58-21A-3~~(M)~~ (1)(d)(14) NMSA 1978, the “percentage rate” will be set biannually on the financial institutions division’s mortgage lending website on the first business day in January and July.

[12.15.3.15 NMAC - N, 01/23/2004; 12.15.3.15 NMAC - N, 06/01/10]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

This is an amendment to 12.15.4 NMAC Part name and Sections 7 and 8, effective 06/01/10.

**TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 15 FINANCIAL INSTITUTIONS - GENERAL
PART 4 HOME LOAN
PROTECTION ACT - HIGH COST**

**LOANS: REPAYMENT ABILITY
[~~FINANCIAL RATIOS AND~~
GUIDELINES]**

12.15.4.7 DEFINITIONS: For purposes of this rule, the definitions set forth in the act and regulations adopted pursuant to the act shall apply unless otherwise noted. ~~[A:]~~ **“Reasonably reliable documentation”** means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower’s requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

~~[B:]~~ **“Relevant financial records”** means such reasonably available documents as a borrower’s credit application; financial statement; credit report; tax returns; bank account statements; payroll receipts; other third-party income verification or any other similar reports.]
[12.15.4.7 NMAC - N, 01/30/2004; A, 08/31/09; A, 06/01/10]

12.15.4.8 REASONABLE ABILITY TO REPAY: The documentation of “reasonable ability to repay” in ~~[Chapter 122 Session Law]~~ Section 58-21A-4 [56] (C) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower’s financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower’s reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The “reasonable ability to repay” standard shall be demonstrated through reasonably reliable documentation.
[12.15.4.8 NMAC - N, 01/30/2004; A, 08/31/09; A, 06/01/10]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

This is an amendment to 12.19.1 NMAC Sections 3 and 6, effective 06/01/10.

12.19.1.3 STATUTORY AUTHORITY: Mortgage Loan Company Act, Section 58-21-9 NMSA 1978 and New Mexico Mortgage Loan Originator Licensing Act, ~~[Chapter 122 Session 19(B) Session~~

~~Law 2009]~~ Section 58-21B-19 NMSA 1978. [9/30/97 - Rn, 12 NMAC 19.1.3, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.1.6 OBJECTIVE: The objective of this part is to effectuate the purposes of the Mortgage Loan Company Act, Section 58-21-1 NMSA 1978 et seq., and the New Mexico Mortgage Loan Originator Licensing Act, ~~[Chapter 122 Session Law 2009]~~ Section 58-21B -1 NMSA 1978 et seq., and to clarify their meaning.
[5/5/86, 9/30/97 - Rn, 12 NMAC 19.1.6 & A, 12/15/08; A, 08/31/09; A, 06/01/10]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
FINANCIAL INSTITUTIONS
DIVISION**

This is an amendment to 12.19.2 NMAC Sections 3, 6, 7, 8, 11, 13, 14 and the addition of new Sections 15, 16 and 17, effective 06/01/10.

12.19.2.3 STATUTORY AUTHORITY: New Mexico Mortgage Loan Originator Licensing Act, ~~[Chapter 122 Session Law 2009]~~ Section 58-21B-19 NMSA 1978.
[12.19.2.3 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.6 OBJECTIVE: The objective of this part is to effectuate the purposes of the New Mexico Mortgage Loan Originator Licensing Act, ~~[Chapter 122 Session Law 2009]~~ Section 58-21B-1 NMSA 1978 et seq., and to clarify its meaning.
[12.19.2.6 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.7 DEFINITIONS:
A. “Days” means a period of time expressed in calendar days, excluding Saturdays, Sundays and legal holidays.

~~[A:]~~ **B. “Independent contractor”** means any person who processes or underwrites residential mortgage loans and is not a W-2 employee of a licensed mortgage loan company.

C. “Scheduled long-term monthly debt payments” means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower’s ability to repay per the current underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran’s affairs (VA).
[B:] D. “Takes a residential

mortgage loan application”, with respect to ~~[Chapter 122 Session Law 2009 Section 3(K)]~~ Section 58-21B-3(K) NMSA 1978, means:

(1) any communication, regardless of form, from a mortgage loan originator to a borrower soliciting a loan application or requesting information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower; or

(2) any communication, regardless of form, from a borrower to a mortgage loan originator, for an offer or responding to a solicitation for an offer of residential mortgage loan terms or providing information typically required in an application for the purpose of deciding whether or not to extend the requested offer of a loan to a borrower.

[12.19.2.7 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.8 FEES: A mortgage loan originator shall pay the following fees. ~~[to maintain a valid mortgage loan originator license.]~~ These fees are non-refundable ~~[These fees]~~ and are in addition to any fees established and charged by the nationwide mortgage licensing system and registry, any approved educational course provider, any approved educational testing provider, any law enforcement agency for finger prints and background checks or by any credit reporting agency used by the nationwide mortgage licensing system and registry:

A. Mortgage loan originator fees:

- (1) application fee: \$200.00;
- (2) license fee: \$200.00;
- (3) annual renewal license fee: \$200.00;
- (4) reinstatement fee: \$100.00.

B. Investigation fee: \$75.00 per hour, or any fraction of an hour, per examiner or investigator.

[12.19.2.8 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.11 SUCCESSIVE YEARS FOR CONTINUING EDUCATION COURSES: The New Mexico Mortgage Loan Originator Licensing Act, ~~[Chapter 122 Session Law 2009 Section 10(E)(2)]~~ Section 58-21B-10(E) (2) NMSA 1978, prohibits a licensed mortgage loan originator from taking the same approved continuing education course in the same or successive years to meet the annual continuing education requirements. For purposes of this limitation, the term “successive years” means the two years following the year in which a mortgage loan originator takes an approved course.

[12.19.2.11 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.13 DISCLOSURES:

At least two (2) days prior to closing, a mortgage loan originator shall provide to the borrower(s) the following federal disclosures specific to the mortgage loan the borrower(s) is receiving: (1) a good faith estimate and (2) a truth in lending statement. These documents shall be used to comply with [Chapter 122 Session Law 2009 Section 52 (D) and (E)] Section 58-21B-20(B) NMSA 1978. For the purposes of the act, the yield spread premium or discount points received by the mortgage loan company shall be disclosed as a credit or charge in a dollar amount on all good faith estimates.

[12.19.2.13 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.14 REASONABLE

ABILITY TO REPAY: The documentation of "reasonable ability to repay", in [Chapter 122 Session Law Section 13(C) (24)] Section 58-21B-13(C)(24) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower's financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower's reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The "reasonable ability to repay" standard shall be demonstrated through reasonably reliable documentation. Reasonably reliable documentation means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower's requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

[12.19.2.14 NMAC - N, 08/31/09; A, 06/01/10]

12.19.2.15 AMENDING OR SURRENDERING A LICENSE:

A. A licensed mortgage loan originator shall amend information entered in the nationwide mortgage licensing system and registry for licensure within five days following the change in that information. The information that shall be required to be amended shall include, but not be limited to the following:

____ (1) name of mortgage loan originator;

____ (2) contact information;

____ (3) employment;

____ (4) surety bond.

B. A licensed mortgage

loan originator shall notify the director of the financial institutions division in writing and amend his or her license information on the nationwide mortgage licensing system and registry within five days following knowledge of any change in his or her credit that involves bankruptcy, foreclosure, judgments, collections, tax liens and other government liens.

C. A licensed mortgage loan originator who has been charged with, convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court shall notify the director of the financial institutions division in writing and amend his or her license information on the nationwide mortgage licensing system and registry within five days of the occurrence.

D. A licensed mortgage loan originator is the only individual that can surrender his or her license. The removal of sponsorship by a mortgage loan company will place the mortgage loan originator license into an "approved - inactive" status.

E. A licensed mortgage loan originator shall immediately surrender his or her license if required to do so by court order, final order, default order, consent order or if the mortgage loan originator no longer meets the minimum requirements for licensure in 58-21B-6 NMSA 1978.

[12.19.2.15 NMAC - N, 06/01/10]

12.19.2.16 CHANGE IN EMPLOYMENT:

A licensed mortgage loan originator whose employment with a mortgage loan originator is terminated shall not originate new mortgage loans for that mortgage loan company but may receive compensation for those mortgage loans originated by him or her while employed by that mortgage loan company.

[12.19.2.16 NMAC - N, 06/01/10]

12.19.2.17 INDIVIDUALS EXEMPT FROM LICENSING:

The exemption in Section 58-21B-4(B)(2) includes an individual who offers or negotiates terms of a residential mortgage loan financed in whole or in part by the individual and secured by the individual's residence.

[12.19.2.17 NMAC - N, 06/01/10]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT FINANCIAL INSTITUTIONS DIVISION

This is an amendment to 12.19.8 NMAC Sections 7, 8, 9, 11, 12 and 15 and the addition of new Sections 16 and 17, effective 06/01/10.

12.19.8.7 DEFINITIONS:

A. "Applicant" means a person who has applied for a license pursuant to the provisions of the Mortgage Loan Company Act, and includes all directors, officers, employees, trustees and owners of such person.

B. "Days" means a period of time expressed in calendar days, excluding Saturdays, Sundays and legal holidays.

[B:] C. "Independent contractor" means any person who originates, processes or underwrites mortgage loans and is not a W-2 employee of a licensed mortgage loan company.

[C:] D. "Licensee" means a person who is licensed pursuant to the provisions of the act, and includes all directors, officers, employees, trustees and owners of such person.

[D:] E. "Person who controls or is controlled", with respect to Section 58-21-2(A) NMSA 1978, means a person who is a director or executive officer of a business or organization, who directly or indirectly, or acting in concert with one or more other persons or entities, owns, controls or holds power to vote, or holds proxies representing ten percent (10%) or more of the voting shares or rights of any entity, or the spouse of such person.

[E:] F. "Reasonably reliable documentation" means any documentation that is required by a mortgage loan company to satisfy the requirements of a loan product that meets the borrower's requested terms and qualifications, documents the source of repayment and includes verifiable written documentation obtained from the borrower or a third party. Reasonably reliable documentation may include but may not be limited to verbal verifications.

G. "Scheduled long-term monthly debt payments" means the monthly payments of all installment debts, revolving charge accounts, open accounts and lines of credit that would be used to determine a borrower's ability to repay per the current underwriting guidelines of the federal housing administration (FHA), the federal national mortgage association (FNMA), the federal home loan mortgage corporation (FHLMC) or the department of veteran's affairs (VA).

[12.19.8.7 NMAC - Rp, 12 NMAC 19.2.8.7, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.8.8 APPLICANT AND LICENSEE REQUIREMENTS:

A. Application for licensure: In addition to the information required by Section 58-21-4 NMSA 1978 of the act, each applicant for issuance or renewal of a license shall be subject to the following requirements:

(1) applications for license or renewal of a license shall be made using ~~[forms provided by the director;]~~ the nationwide mortgage licensing system and registry;

~~[(2) if the application is for renewal of a license, the applicant shall specify any changes in the location or name of the business within the last 12 months and list the names and addresses of any person having acquired an interest in the business within the last 12 months; this update of information does not relieve the licensee of updating any such information under Section 58-21-11 NMSA 1978;~~

~~[(3) the current license issued pursuant to the act shall be prominently displayed at the principal office of the licensee; a branch licensee shall be prominently displayed at each branch office of the licensee;]~~

(2) a mortgage loan company shall obtain and maintain a unique identifier number issued by the nationwide mortgage licensing system and registry for each principal office, divisional office or branch office;

~~[(4)]~~ (3) an independent [contractors] contractor, prior to originating mortgage loans, shall file an application with the director and obtain a license under the Mortgage Loan Company Act[-(58-21-1)], Section 58-21-1 NMSA 1978 et seq.

B. The unique identifier number of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan applications, solicitations, advertisements, including business cards and web sites.

~~[(B-)]~~ **C.** Licensees shall keep the following records and make them available upon examination or investigation:

(1) documents related to the withdrawal, denial or settlement of a residential mortgage loan which includes, but are not limited to:

(a) mortgage loan transaction documents: all loan applications, written or electronic, mortgage loan settlement statement, loan transmittal summary, credit report, appraisal, all verifications (mortgage, rent, deposits, employment, income), lender loan approval, clear to close and interest rate lock-in confirmation, title commitment, survey and sales contract (if loan is a purchase);

(b) rate sheet(s) used in the determination of the information used on the initial good faith estimate and loan application and any subsequent good faith estimate and loan application done prior to interest rate lock-in;

(c) rate sheet(s) used for the determination of the interest rate that was locked-in with the lender for the purpose of settlement and funding the loan;

(d) all disclosures required by the Real Estate Settlement Procedures Act, Truth in Lending Act (Regulation Z), the Equal Credit Opportunity Act, the Patriot Act and the Mortgage Loan Company Act;

(e) disclosures that include: borrower's signature, certification and authorization, fair credit reporting, affidavit of occupancy, insurance anti-coercion statement, mortgage loan agreement, privacy policy, loan comparison for adjustable rate mortgages, credit score information;

(f) title documents: note, mortgage or deed of trust (including all riders for the note and mortgage or deed of trust), final signed truth-in-lending disclosure, lender's closing instructions to the title company, closing disbursement sheet and copies of issued checks or direct deposits, initial escrow account statement and right of rescission;

(2) all evidence of payment of commissions, brokers' fees or other forms of compensation for services rendered in connection with a mortgage loan transaction;

(3) all books, records, canceled checks pertaining to, but are not limited to, the mortgage loan transactions and payment of fees; books and records shall include cash receipts and disbursements journals, to be posted daily, and a general ledger, to be posted monthly;

(4) the books of account shall include a funded residential mortgage loan journal showing an entry for each mortgage loan transaction completed;

(5) records covered by 12.19.8 NMAC include electronic records.

~~[(E-)]~~ **D.** Licensees' accounts.

(1) Trust accounts: All funds belonging to third party settlement service providers (e.g., appraisal services, credit reporting agencies), borrowers or sellers, shall, upon receipt thereof, be deposited into the licensee's trust account that is set up exclusively for the deposit and disbursement of third party settlement service fees and the borrowers or sellers funds. The trust account shall be established with a depository institution the accounts of which are insured by the federal deposit insurance corporation or the national credit union administration. Deposited funds shall remain in the trust account until disbursed to the third party settlement service providers, used at settlement for the borrowers benefit or returned to the rightful borrowers or

sellers. If the trust account is interest-bearing, all interest shall be distributed to the appropriate parties, on a pro rata basis, at the time trust funds are disbursed or returned. All funds received by the licensee must be disbursed within 30 days of the settlement of the residential mortgage loan.

(2) If a licensee requires a deposit in connection with an application for a mortgage loan, there must be an agreement in writing between consumer and licensee, setting forth the disposition of the deposit, whether the loan is finally consummated or not.

(3) Deposit accounts: All deposit accounts maintained by a licensee shall be reconciled within ten (10) business days after receipt of statements; "deposit accounts" includes all accounts maintained with depository institutions.

[12.19.8.8 NMAC - Rp, 12 NMAC 19.2.8.8.1, 5 & 6, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.8.9 GOOD BUSINESS REPUTATION:

Pursuant to Section 58-21-8(A) NMSA 1978 of the act, a licensee or applicant may be deemed to lack a good business reputation if the director finds that the licensee or applicant has done or is doing any of the following, which includes, but is not limited to:

A. repeatedly issues worthless checks;

B. has outstanding unsatisfied judgments;

C. repeatedly fails to meet obligations when due;

D. fails to pay the examination fee or investigation fee provided by Section 58-21-5 or Section 58-21-12 NMSA 1978;

E. allows unlicensed independent contractors or mortgage loan originators to originate mortgage loans.

[12.19.8.9 NMAC - Rp, 12 NMAC 19.2.8.8.7, 12/15/08; A, 08/31/09; A, 06/01/10]

12.19.8.11 FEES: A mortgage loan company shall pay the following fees ~~[to maintain a valid mortgage loan company or branch license]~~. These fees are non-refundable ~~[-These fees]~~ and are in addition to any fees established and charged by the nationwide mortgage licensing system and registry.

A. Main office:

(1) application fee: \$500.00;

(2) license fee: \$500.00;

(3) supervisory fee: \$500.00;

(4) annual license renewal fee: \$500.00;

(5) annual supervisory renewal fee: \$500.00;

(6) reinstatement ~~[fe]~~ fee: \$250.00;

(7) amendment ~~[fes]~~ fee: \$50.00.

B. Branch office:
 [(1)] license fee: \$500.00;
 [(2)] (1) annual [license renewal]
 branch office fee: \$500.00;
 [(3)] (2) reinstatement fee:
 \$250.00;
 [(4)] (3) branch amendment fees:
 \$50.00.

C. Investigation fee:
 \$75.00 per hour, or any fraction of an hour,
 per examiner or investigator.
 [12.19.8.11 NMAC - N, 08/31/09; A,
 06/01/10]

12.19.8.12 DISCLOSURES:

A. Mortgage loan companies shall provide rate lock disclosures to and enter into signed lock-in agreements with a borrower(s). The mortgage loan company shall use a rate lock disclosure form of their choosing. The rate lock disclosure shall include the following information: (1) a rate float option, (2) the lock-in loan interest rate, (3) loan pricing for the lock-in interest rate, (4) loan terms, (5) loan lock-in period and (6) any fees required for an extension of the lock-in period. For the purposes of act, the term "pricing" means the yield spread premium or discounts points disclosed as a credit or charge in dollars to the borrower(s) for the loan interest rate.

B. At least two (2) days prior to closing, a mortgage loan company shall provide to the borrower(s) the following federal disclosures specific to the mortgage loan the borrower(s) is receiving: (1) a good faith estimate and (2) a truth in lending statement. These documents shall be used to comply with [Chapter 122 Session Law 2009 Section 52 (D) and (E)] Section 58-21-31 (D) and (E) NMSA 1978. For the purposes of the act, the yield spread premium or discount points received by the mortgage loan company shall be disclosed as a credit or charge in a dollar amount on all good faith estimates.

[12.19.8.12 NMAC - N, 08/31/09; A, 06/01/10]

12.19.8.15 REASONABLE ABILITY TO REPAY:

The documentation of "reasonable ability to repay" in [Chapter 122 Session Law 2009 Section 32(N)] Section 58-21-8 (N) NMSA 1978, will depend upon the totality of facts and circumstances relating to a specific residential mortgage loan transaction and the borrower's financial condition and circumstances. While the documentation of certain residential mortgage loan transactions may clearly demonstrate the borrower's reasonable ability to repay, others may require closer scrutiny to determine whether the documentation for a particular residential mortgage loan transaction sufficiently demonstrates ability to repay. The "reasonable ability to repay" standard

shall be demonstrated through reasonably reliable documentation.

[12.19.8.15 NMAC - N, 08/31/09; A, 06/01/10]

12.19.8.16 AMENDING OR SURRENDERING A LICENSE:

A. A licensed mortgage loan company shall amend information entered in the nationwide mortgage licensing system and registry for licensure within five days following the change in that information. The information that shall be required to be amended shall include, but not be limited to the following:

- (1) company name;
- (2) company address;
- (3) company legal status;
- (4) ownership;
- (5) control persons;
- (6) qualified manager;
- (7) surety bond;
- (8) branch name or location;
- (9) branch manager.

B. A licensed mortgage loan company that has any owner, control person or qualified manager who has been charged with, convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court shall notify the director of the financial institutions division in writing and amend the company's license information on the nationwide mortgage licensing system and registry within five days of the occurrence.

C. A licensed mortgage loan company shall immediately surrender the company's license if required to do so by court order, final order, default order, consent order or if the mortgage loan company no longer meets the minimum requirements for licensure in 58-21-3 and 58-21-4 NMSA 1978.

D. A licensed mortgage loan originator is the only individual that can surrender his or her license. The removal of sponsorship by a mortgage loan company will place the mortgage loan originator license into an "approved - inactive" status.
 [12.19.8.16 NMAC - N, 06/01/10]

12.19.8.17 MORTGAGE LOAN ORIGINATOR SPONSORSHIP:

A licensed mortgage loan originator whose employment with a mortgage loan company is terminated shall not originate new mortgage loans for that mortgage loan company but may receive compensation for those mortgage loans originated by him or her while employed by that mortgage loan company.

[12.19.8.17 NMAC - N, 06/01/10]

NEW MEXICO SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.2 NMAC Sections 12, 14, 15, 16 and 18, effective 06/07/10.

16.26.2.12 QUALIFICATIONS AND APPLICATION FOR LICENSURE AS A NONDISPENSING AUDIOLOGIST:

Application for licensure as a audiologist must be accompanied by the following documents:

A. official transcripts verifying at least a master's degree in audiology, or communication disorders or equivalent degree in audiology or communication disorders awarded prior to January 1, 2007; or a doctoral degree in [audiology] audiology or equivalent degree regardless of degree name; [and] or

B. a certification bearing an official seal and attesting to completion of degree requirements from the registrar, mailed directly to the board from the conferring institution; and

C. a certified copy of a certificate of clinical competency from a board recognized national speech-language association or proof of completion of the clinical fellowship year or equivalent; and

D. proof of having passed a nationally recognized standard examination in audiology;

E. passing the jurisprudence examination with a grade of no less than 70%; and

F. if currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction;

G. physicians eligible for certification or certified by the American board of otolaryngology head and neck surgery, who wish to be licensed as a hearing aid dispenser, must provide the following documents:

(1) a certified copy of current New Mexico medical license; and

(2) a notarized letter from a qualified sponsor as specified in the act verifying work experience of at least six months in the fitting of the hearing aids, the initial 320 hours of which must be under direct supervision of the sponsor.

[16.26.2.12 NMAC - Rp, 16 NMAC 26.3.9, 2/3/06; A, 11/29/08; A, 06/07/10]

16.26.2.14 QUALIFICATIONS AND APPLICATION FOR LICENSURE FOR A HEARING AID DISPENSER:

A. Application for

licensure as a hearing aid dispenser must be accompanied by documentation of the following:

(1) applicant is eighteen years of age or older;

(2) has a high school education or the equivalent; and

(3) has a business location in New Mexico and can provide satisfactory evidence of the following:

(a) a notarized letter from an employer verifying completion of the training requirements as outlined for the temporary hearing aid dispensing trainee permit;

(b) written examination: the board will require each candidate to pass the IHS, or the NBC-HIS hearing aid written examination, or a nationally recognized hearing aid dispensers examination approved by the board or other exams approved by the board with an overall score of no less than 70%;

(c) practical examination: the board will require each candidate to pass the hearing aid practical examination or other exams approved by the board with an overall score of no less than 70%; and

(d) passing the jurisprudence examination with an overall score of no less than 70%;

(4) any applicant who fails any portion of the licensing examination two times may not reapply until he/she has waited six months and repeated the training and application requirements; at that time the entire exam must be repeated.

B. If currently or previously licensed in another state a verification of licensure must be sent directly to the board by the issuing jurisdiction.

~~[B.]~~ **C.** Physicians eligible for certification or certified by the American board of ~~[otolaryngolog]~~ otolaryngology head and neck surgery, who wish to be licensed as a hearing aid dispenser, must provide the following documents:

(1) a certified copy of current New Mexico medical license; and

(2) a notarized letter from a qualified sponsor as specified in the act verifying work experience of at least six months in the fitting of the hearing aids, the initial 320 hours of which must be under direct supervision of the sponsor.

[16.26.2.14 NMAC - Rp, 16 NMAC 26.3.11, 2/3/06; A, 06/07/10]

16.26.2.15 QUALIFICATION AND APPLICATION FOR TEMPORARY HEARING AID DISPENSING TRAINEE PERMIT:

Individuals who meet all requirements for a hearing aid dispenser's license but do not have the required practical experience in dispensing of hearing aids shall apply for a temporary hearing aid dispensing permit.

A. A trainee permit may be

issued at any time and will be valid for one (1) year.

B. Upon expiration, another training permit may not be issued for one calendar year following expiration of the previous permit or if the applicant has failed the examination twice within a five year period.

C. The trainee must identify a qualified sponsor as specified in the act.

D. Each trainee shall receive intensive training working under the direct supervision of his/her sponsor for a minimum of three hundred twenty (320) hours within a three (3) month period.

E. Following completion of 320 hours, an additional five (5) continuous months of full time work is required. All activities of the trainee during this time must be reviewed and approved by the sponsor and may include dispensing hearing aids, making adjustments in fitting and modifying and repairing hearing aids and earmolds. All sales receipts must have some evidence of the sponsor's approval of the sale.

F. Passing the jurisprudence examination with a grade of no less than 70%.

[16.26.2.15 NMAC - Rp, 16 NMAC 26.3.12, 2/3/06; A, 06/07/10]

16.26.2.16 HEARING AID DISPENSER TRAINEE EXAMINATION FOR COMPETENCE:

Following completion of a minimum 320 hours all candidates under a temporary hearing aid dispensing permit under a training program shall:

A. pass the practical examination which tests proficiency in pure tone audiometry, including air conduction and bone conduction testing, live-voice or recorded-voice speech audiometry, including speech reception threshold and speech discrimination tests, masking when indicated, recording and evaluation audiograms and speech audiometry determining proper selection and adjustment of hearing aids;

B. taking earmold impressions;

C. the board office will schedule written and practical examinations once each quarter; each applicant will be notified of the examination schedule for the next year when they receive their trainee permit; applicants must register for the examination a minimum of 90 days prior to the scheduled exam;

D. an applicant who fails the written or the practical portion of the examination must pay the application fee before being allowed to retake the examination;

E. applicants who cannot sit for the examinations due to circumstances

beyond their control must submit a written request prior to the scheduled examination; extenuating circumstances include illness, death in the immediate family, military service, or other severe circumstances which do not allow an applicant to attend the scheduled examination; applicant must provide documentation of extenuating circumstances; and

F. applicants who fail to sit for scheduled examinations without prior notification must submit a new application, including the fee and all documentation.

[16.26.2.16 NMAC - Rp, 16 NMAC 26.3.13, 2/3/06; A, 06/07/10]

16.26.2.18 TEMPORARY PARAPROFESSIONAL LICENSURE AS AN APPRENTICE IN SPEECH-LANGUAGE (ASL):

A. P r e r e q u i s i t e requirements:

(1) Acceptance of a temporary paraprofessional licensee as an apprentice in speech-language is subject to board approval. Such licensees shall:

(a) be working towards a license pursuant to the provisions of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act;

(b) certify that he/she is not guilty of any activities listed in Section 61-14B-21 of the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act; and

(c) provide proof of having met educational, supervision, and employment requirements.

(2) It is the responsibility of the apprentice in speech-language and the supervising speech-language pathologist to insure the distinction between the roles of the apprentice in speech-language and the graduate student.

B. E d u c a t i o n a l requirements:

(1) a baccalaureate degree in communication disorders or baccalaureate degree in another field with thirty (30) semester hours of credit in communication disorders;

(2) enrolled in a master's degree program in speech-language pathology or communication disorders and completes a minimum rate of nine (9) semester hours per year of graduate courses in communication disorders per year; or

(a) if not accepted into a master's degree program in speech-language pathology or communication disorders ~~[enrolled in and]~~ completes nine (9) semester hours of graduate courses per year with at least three (3) hours in communication disorders, six (6) hours may be taken in a related field;

(b) if the educational institution does not permit students who are not

matriculated into a graduate program to take graduate courses in communication disorders, the student may substitute three (3) hours in a related field for the three (3) hours in communication disorders, in addition to the other six (6) hours in a related field;

(c) acceptance in a master's degree program must take place within two (2) years of initial license; and

(3) maintains a minimum of a 3.0 GPA in communication disorders course work and/or master's degree program.

C. Supervision requirements:

(1) Work of the apprentice in speech-language must be supervised by a speech-language pathologist licensed by this act and who has a minimum of two years experience in the field.

(a) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be direct supervision.

(b) Minimum of ten (10) percent of contact time of the apprentice in speech-language must be indirect supervision.

(2) It is recommended that the speech-language pathologist's and audiologist's direct caseload size be limited to no more than 40 clients.

(a) A speech-language pathologist may supervise a maximum of three apprentices at one time.

(b) The supervising speech-language pathologist is expected to appropriately reduce their direct caseload for each apprentice they supervise, ensuring the maintenance of high professional standards as stated in the code of ethics.

(c) It is the responsibility of the supervising speech-language pathologist and the apprentice in speech-language to ensure the distinction between the roles of the apprentice in speech-language and the graduate student.

D. Employment requirements:

(1) Terms of employment must require at least a temporary paraprofessional license as an apprentice in speech-language. The role of the apprentice in speech-language shall be determined in collaboration with the supervising speech-language pathologist (SLP) and the employer.

(2) Employment duties must be limited to the following:

(a) conduct speech-language and/or hearing screenings;

(b) conduct treatment programs and procedures that are planned, selected and/or designed by the supervising SLP;

(c) prepare written daily plans based on the overall intervention plan designed by the supervising SLP;

(d) record, chart, graph, or otherwise display data relative to the client performance and report performance

changes to the supervising SLP;

(e) maintain daily service/delivery treatment notes and complete daily charges as requested;

(f) report but not interpret data relative to client performance to teachers, family, or other professionals;

(g) assist the speech-language pathologists during assessment of clients, such as those who are difficult to test;

(h) perform clerical duties, including maintenance or therapy/diagnostic material/equipment, client files, as directed by the SLP supervisor;

(i) participate with the speech-language pathologist in research projects, in-service training, and public relations programs.

E. Employment duties must not include any of the following:

(1) administer diagnostic tests;

(2) interpret data into diagnostic statements or clinical management strategies or procedures;

(3) select or discharge clients for services;

(4) interpret clinical information including data or impressions relative to client performance;

(5) treat clients without following the individualized treatment plan;

(6) independently compose clinical reports except for progress notes to be held in the client's file;

(7) refer a client to other professionals or agencies;

(8) provide client or family counseling;

(9) develop or modify a client's individual treatment plan: IEP/IFSP/ clinical report or plan of care in anyway without the approval of the SLP supervisor;

(10) disclose clinical or confidential information;

(11) sign any formal documents without the supervising SLP co-signature;

(12) represent himself/herself as a speech-language pathologist.

F. Documentation required: All applicants for temporary paraprofessional license as an apprentice in speech-language are required to provide the following documentation to the board each year:

(1) a completed board approved license application form, signed in the presence of a notary public;

(2) the required license application fee; and

(3) a completed board approved verification of employment form verifying:

(a) applicant's employment;

(b) performance responsibilities of the apprentice in speech-language;

(c) limitations on employment practices of the apprentice in speech-language license holder (apprentice in

speech-language);

(d) provision for supervision by an SLP licensed according to this act;

(4) a completed board approved verification of education form verifying:

(a) course work completed in communication disorders or other courses as outlined in the degree plan with a minimum GPA of 3.0;

(b) current degree plan once the applicant is admitted to a master's degree program; and

(c) official copy of transcripts from college or university.

[16.26.18 NMAC - Rp, 16 NMAC 26.2.15, 2/3/06; A, 11/29/08; A, 06/07/10]

NEW MEXICO SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.4 NMAC Section 8, effective 06/07/10.

16.26.4.8 ANNUAL RENEWAL OF LICENSES:

A. Section 8 requires all licensees except clinical fellows and apprentices to apply for license renewal on or before January 30 on the renewal forms supplied by the board office. The renewal requirements for clinical fellows and apprentices are set forth in Sections 9 and 10 of this part.

B. Licensees shall assume the total responsibility for:

(1) filing a current mailing address with the board office;

(2) completing the renewal form and ensuring its delivery to the board office on or before January 30;

(3) enclosing the appropriate fee; and

(4) enclosing documentation of meeting continuing education requirements.

C. To assist in the renewal process, the board office will:

(1) mail renewal notices and the appropriate forms to the licensee's address of record on or before December 15; and

(2) mail renewed and reinstated licenses no later than 30 days from day of receipt of application, fees and appropriate documentation.

D. Expiration: All speech-language pathology, audiology and hearing aid dispensing licenses expire on January 30 of each year and renewal forms must be complete and postmarked no later than the expiration date or a late fee will be assessed without exception.

E. Grace period: There is a

grace period [permitted] permitting renewal of expired licenses which ends March 31 of the intended licensure year. However the license shall be considered expired and the licensee must refrain from practicing.

F. Renewal of license during the grace period ending March 31 of the intended license year will require a late fee. Individuals renewing during the grace period may not practice with the expired license.

G. If a licensee fails to renew within the grace period, the licensee must reapply as a new applicant, meet all applicable requirements, meet CEU requirements and pay the application fee, renewal fee and late penalty fee.

H. Licensees shall be notified by the board office of all license expirations ten (10) days after the close of the grace period.

I. Timely renewal of license(s) is the full and complete responsibility of the licensee. Pursuant to Subsection C of 16.26.4.8 NMAC of these regulations, renewal forms are mailed to the licensee at address on record no later than December 15. If the renewal form is not received by the licensee within a reasonable time after December 15, it is the responsibility of the licensee to contact the board office. Non-receipt of the renewal form by the licensee will not exempt licensure expiration or late penalty fees.

[12/21/71; 2/5/80; 4/5/83; 11/9/96; 11/7/98; 11/27/99; 16.26.4.8 NMAC - Rn & A, 16 NMAC 26.4.8, 2/3/06; A, 11/29/08; A, 06/07/10]

NEW MEXICO SPEECH-LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.6 NMAC Section 8, effective 06/07/10.

16.26.6.8 FEES: All fees are payable to the board and are non-refundable. Fees are as follows:

| | Initial fee | Renewal fee |
|---|--------------------------|--------------------------|
| A. Hearing aid dispenser trainee temporary permits includes hearing aid practical and written exam | \$300.00 | |
| B. Temporary paraprofessional license (apprentice) | \$50.00 | \$50.00 |
| C. Clinical fellow license | \$50.00 | \$50.00 |
| D. Speech-language pathologist and audiologist license | \$100.00 | \$[65.00] <u>85.00</u> |
| E. Hearing aid dispensers | \$175.00 | \$[150.00] <u>180.00</u> |
| F. Hearing aid practical, and written exams | \$200.00 | |
| G. Endorsement to dispense hearing aids | \$100.00 | \$[85.00] <u>95.00</u> |
| H. Processing continuing education offerings per offering | \$[35.00] <u>50.00</u> | |
| I. Late renewal fee | \$[50.00] <u>75.00</u> | |
| J. All application packet fees | \$10.00 | |
| K. Dual licensure (SLP/audiology) | \$200.00 | \$[110.00] <u>150.00</u> |
| L. Verification of licensure | \$[10.00] <u>15.00</u> | |
| M. Paper list | \$[100.00] <u>125.00</u> | |
| N. Mailing labels | \$[125.00] <u>150.00</u> | |
| O. Electronic list | \$[150.00] <u>175.00</u> | |
| P. Duplicate license | \$10.00 | |
| Q. Insufficient funds | \$25.00 | |

[10/25/91; 11/9/96; 11/7/98; 11/27/99; 16.26.6.8 NMAC - Rn & A, 16 NMAC 26.6.8, 2/3/06; A, 06/07/10]

NEW MEXICO SPEECH- LANGUAGE PATHOLOGY, AUDIOLOGY AND HEARING AID DISPENSING PRACTICES BOARD

This is an amendment to 16.26.9 NMAC Section 8, effective 06/07/10.

16.26.9.8 CODE OF ETHICS:

A. The purpose of the Code of Ethics is to preserve high standards of integrity and ethical principles in the discharge of obligations to the public by the professions of speech-language pathologists, audiologists and hearing aid dispensers. Every individual who practices as a licensed speech-language pathologist, audiologist or hearing aid dispenser shall abide by the Code of Ethics. Any action that violates the Code of Ethics is to be considered unethical and subject to disciplinary action by the board. Failure of the code to specify any particular responsibility or practice is not to be construed as a denial of the existence of a responsibility or practice in that area. The rules of ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all licensed individuals. The fundamental rules of ethical conduct as they relate to responsibility to the public are described in three categories, principles of ethics, ethical proscriptions and matters of professional propriety.

(1) Principles of ethics: Six principles serve as a basis for the ethical evaluation of professional conduct and form the underlying moral basis for the Code of Ethics. Licensed individuals subscribing to this code shall observe these principles as affirmative obligations under all conditions of professional activity.

(2) Ethical proscriptions: Ethical proscriptions are formal statements of prohibitions that are derived from the principles of ethics.

(3) Matters of professional propriety: Matters of professional propriety represent guidelines of conduct designed to promote the public interest and thereby better inform the public and particularly the persons in need of service by the speech-language pathologist, audiologist and/or hearing aid dispenser as to the availability and the rules governing the delivery of these services.

B. Principles of ethics 1: Individuals shall honor their responsibility to hold paramount the welfare of the persons they serve professionally.

(1) Licensed individuals shall use every resource including referral to other specialists as needed, to ensure that high quality service is provided.

(2) Licensed individuals shall fully inform the persons they serve of the nature and possible effects of the services rendered and products dispensed.

(3) Licensed individuals shall fully inform subjects participating in research or teaching activities of the nature and possible effects of these activities.

(4) Licensed individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefit can reasonably be expected.

(5) Licensed individuals shall maintain adequate records of professional services rendered and products dispensed and shall provide access to those records when appropriately authorized.

(6) Licensed individuals shall use persons in research or as subjects of teaching demonstrations only with their fully informed consent.

(7) Licensed individuals' fees shall be commensurate with services rendered.

(8) Licensed individuals shall take all reasonable precautions to avoid injury to persons in the delivery of professional services.

(9) Licensed individuals whose services are adversely affected by substance abuse or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected area of practice.

C. Ethical proscriptions:

(1) Licensed individuals shall not discriminate in the delivery of professional services on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

(2) Licensed individuals shall not guarantee the results of any treatment, procedure, or product, directly or by implication; however, they may make a reasonable statement of prognosis. Caution must be exercised not to mislead any person served professionally to expect results that cannot be predicted from sound evidence.

(3) Licensed individuals must not evaluate, treat, or dispense except in a professional relationship.

(4) Licensed individuals shall not evaluate, treat, or dispense solely by correspondence. This does not preclude follow-up correspondence with persons previously served, nor providing them with general information of an educational nature.

(5) Licensed individuals shall not reveal, without proper authorization any professional or personal information about the person served professionally, unless required to do so, or unless doing so is necessary to protect the welfare of the person or of the community.

(6) Licensed individuals must not charge for services not rendered.

(7) Licensed individuals must

not exploit any person in the delivery of professional services, including accepting persons for treatment when benefit cannot reasonably be expected or continuing treatment when it is no longer necessary.

D. Principles of ethics II: Licensed individuals shall maintain high standards of professional competence.

(1) Licensed individuals shall engage in those aspects of the professions that are within the scope of their licensed professional competence.

(2) Licensed individuals shall identify competent, dependable referral sources for persons served professionally.

(3) Licensed individuals shall insure that all equipment used in the provision of services is in proper working order and is properly calibrated.

(4) Licensed individuals shall continue their professional development.

(5) Licensed individuals shall possess appropriate qualifications for services provided.

E. Ethical proscriptions:

(1) Licensed individuals must not provide services by prescriptions from anyone who is not licensed pursuant to these regulations.

(2) Licensed individuals shall prohibit any of their staff from providing services that they are not licensed or qualified to perform.

(3) Licensed individuals must not require or delegate any service requiring professional competence and licensure of/to anyone who is not competent and licensed to engage in any practice that is a violation of the Code of Ethics.

(4) Licensed individuals must not offer clinical services by supportive personnel for whom they do not provide appropriate supervision and assume full responsibility.

(5) Licensed individuals shall not provide professional services without exercising independent professional judgement, regardless of referral source or prescription.

F. Principles of ethics III:

(1) Licensed individuals shall honor their responsibility to the public by providing accurate information in all communications involving any aspect of professional service rendered.

(2) Licensed individuals' statements to the public - advertising, announcing, and marketing their professional services and products - shall adhere to prevailing and acceptable professional standards.

(3) Licensed individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, the products dispensed thereof, about the professions and about professional services.

G. Ethical proscriptions:

(1) Licensed individuals shall not misrepresent their credentials, competence, education, training, title, or experience.

(2) Licensed individuals shall not misrepresent diagnostic information, services rendered, or products dispensed, or artifice to defraud in connection with obtaining payment or reimbursement for such services or products.

(3) Licensed individuals must not make public statements regarding professional services and products that contain representations or claims that are false, deceptive or misleading.

(4) Licensed individuals must not use professional or commercial affiliations in any way that would mislead or limit services to persons served professionally.

H. Matters of professional propriety: Licensed individuals should announce services in a manner consistent with highest professional standards in the community.

I. Principles of ethics IV:

(1) Licensed individuals shall maintain objectivity in all matters concerning the welfare of persons served professionally. Licensees who dispense products to the public shall observe the following standards.

(a) Products associated with professional practice must be dispensed as a part of a program of comprehensive habilitative care.

(b) Fees established for professional services must be independent of whether a product is dispensed.

(c) Persons served shall be provided freedom of choice for the source of services and products.

(d) Price information about professional services rendered and products dispensed must be disclosed by providing or posting a complete schedule of fees and charges in advance of rendering services, which differentiates between fees for professional services and charges for products dispensed.

(e) Products dispensed to the person served must be evaluated to determine effectiveness.

(2) Any person who practices the sale or fitting of hearing aids shall deliver to any person supplied with a hearing aid, a receipt that shall contain: ~~[the licensee's signature, the address of the licensee's regular place of business and the number of his license. It shall also show the make and model of the hearing aid furnished along with the full terms of the sale clearly stated. If the hearing aid is not new, the receipt must clearly show whether the hearing aid is used or reconditioned, whichever is applicable in terms of any guarantee. The receipt shall also show that the purchaser was advised that the licensee was not a licensed physician and that the examination~~

~~and recommendation was made as a hearing aid dispenser or fitter and not as a medical diagnosis or prescription.]~~

(a) the licensee's signature, the address of the licensee's regular place of business and the number of his license; it shall also show the make and model of the hearing aid furnished along with the full terms of the sale clearly stated; if the hearing aid is not new, the receipt must clearly show whether the hearing aid is used or reconditioned, whichever is applicable in terms of any guarantee; the receipt shall also show that the purchaser was advised that the licensee was not a licensed physician and that the examination and recommendation was made as a hearing aid dispenser or fitter and not as a medical diagnosis or prescription;

(b) the information regarding the trial period which shall be a minimum of 45 consecutive days; if the 45th day falls on a holiday, weekend, or a day the business is not open, the effective date shall be the first day the business reopens; full disclosure of the conditions of any offer of a trial period with a money back guarantee or partial refund; a trial period shall not include any time that the hearing aid is in the possession of the dispenser or the manufacturer; any extension of the 45-day refund period must be in writing and submitted to the client;

(c) shall also include the name, address, and telephone number of the speech language pathology, audiology and hearing aid dispensing practices board in the event a complaint needs to be filed.

(3) Any purchaser of a hearing instrument shall be entitled to a refund of the purchase price advanced by purchaser for the hearing instrument, less the agreed-upon amount associated with the trial period, upon return of the instrument to the licensee in good working order within the trial period. Should the order be canceled by purchaser prior to the delivery of the instrument, the licensee may retain the agreed-upon charges and fees as specified in the written contract. The purchaser shall receive the refund due no later than the 30th day after the date on which the purchaser cancels the order or returns the hearing instrument to the licensee.

J. Ethical proscriptions:

(1) Licensed individuals must not participate in activities that constitute a conflict of interest.

(2) Licensed individuals must not directly or indirectly give or offer to give money or anything of value to any person who advises another person in a professional capacity as an inducement to influence him/her or have him/her influence others to purchase or contract to purchase products sold or offered for sale by the licensee, or to refrain from dealing in the products of competitors.

K. Matters of professional

propriety:

(1) Licensed individuals should not accept compensation for supervision or sponsorship from a supervised or sponsored individual.

(2) Individuals should present products they have developed to their colleagues in a manner consonant with highest professional standards.

L. Principles of ethics V: Licensed individuals shall honor their responsibilities to the professions and their relationships with members of allied professions.

M. Matters of professional propriety:

(1) Licensed individuals should seek to provide and expand services to persons with speech, language and hearing handicaps as well as assist in establishing high professional standards for such programs.

(2) Licensed individuals should educate the public about speech, language and hearing processes and handicaps, and matters related to professional competence.

(3) Licensed individuals should strive to increase knowledge within the professions and share research with colleagues.

(4) Licensed individuals should establish harmonious relations with colleagues and members of other professions and endeavor to inform members of the related professions of services provided by speech-language pathologists, audiologists and hearing aid dispensers.

(5) Licensed individuals should assign credit to those who have contributed to a publication in proportion to their contribution.

N. Principles of ethics VI:

(1) Licensed individuals shall uphold the dignity of the professions and freely accept the professional self imposed standards.

(2) Licensed individuals who have reason to believe that the Code of Ethics has been violated shall inform the board.

(3) Licensed individuals shall cooperate fully with the board in any investigation and adjudication of matters of professional conduct related to this Code of Ethics.

[8/4/81; 8/4/96; 11/9/96; 11/7/98; 16.26.9.8 NMAC - Rn & A, 16 NMAC 26.9.8, 2/3/06; A, 06/07/10]

NEW MEXICO WATER TRUST BOARD

This is an amendment to 19.25.10 NMAC Sections 11 and 14, effective 05/28/10.

19.25.10.11 QUALIFYING WATER PROJECTS AND ELIGIBLE COSTS:

A. The board may authorize the authority to provide financial assistance from the water project fund to qualifying entities only for qualifying water projects as provided by Section 72-4A-6 and Section 72-4A-7, NMSA 1978.

B. Financial assistance shall be made only to qualify entities that:

(1) agree to ~~[operate and maintain]~~ provide for the operation and maintenance of the water project so that it will function properly over the structural and material design life, which shall not be less than twenty years;

(2) require the contractor of the construction project to post a performance and payment bond in accordance with the requirements of Section 13-4-18, NMSA 1978;

(3) provide written assurance signed by an attorney or provide a title insurance policy that the political subdivision has proper title, easements and rights of way to the property upon or through which the water project proposed for funding is to be constructed or extended;

(4) meet the requirements of the financial capability set by the board to ensure sufficient revenues to operate and maintain the water project for its useful life and to repay the loan;

(5) agree to properly maintain financial records and to do an audit of the project's financial records; and

(6) agree to pay costs of originating grants and loans as determined by rules adopted by the board.

C. Plans and specifications for a water project shall be approved by the New Mexico environment department or by another appropriate agency designated by the authority before grant or loan disbursement to pay for construction costs is made to a qualifying entity. Plans and specifications for a water project shall incorporate available technologies and operations design for water efficiency.

D. Financial assistance shall be made for eligible items, which include:

(1) matching requirements for federal and local cost shares;

(2) engineering feasibility reports;

(3) contracted engineering design;

(4) inspection of construction;

(5) special engineering services;

(6) environmental or archeological

surveys;

(7) construction;

(8) land acquisition;

(9) easements and rights of way;

and

(10) legal costs and fiscal agent fees within limits set by the board.

E. A qualified entity which has had financial assistance approved by the state legislature for financing a qualifying water project may apply to the board to redirect the financial assistance to a different water project made necessary by unanticipated events. The decision to redirect the financial assistance to a different qualifying water project will be at the sole discretion of the board and subject to approval of the state legislature as required by Section 72-4A-9(B), NMSA 1978.

[19.25.10.11 NMAC - Rp, 19.25.10.11 NMAC, 7/31/08; A, 5/28/10]

19.25.10.14 [APPEALS: ~~Any applicant or qualified entity may appeal a decision of the board by notifying the board in writing within forty-five days of the date on which notice of an adverse decision is given by the board to an applicant. Notice is deemed to be given on the fifth business day following the date on which written notice is mailed to the applicant by the board by U.S. mail. Appeals not timely or properly made will be barred thereafter. The chairman of the board will promptly review each timely appeal and will recommend, at the next regular meeting of the board, action to be taken by the board on the appeal. The board will review and take action on the appeal and will notify the applicant or qualified entity of the board's decision, in writing, within five working days of the board's decision. The decision of the board is final.]~~

RECONSIDERATION OF BOARD DECISIONS: Any applicant or qualifying entity may request reconsideration of a decision of the board by notifying the board in writing within 15 days following the meeting at which the decision was made. Notice of a decision made in an open meeting of the board is deemed to be given on the date of the meeting, and the time for notification of a request for reconsideration shall run from that date, regardless whether any written notice of the decision is given by the board. A request for reconsideration shall state with particularity the grounds for reconsideration, including any factual or legal matter on which the applicant or qualifying entity believes that there was an error by the board. Upon receiving a timely and proper request for reconsideration, the chairman of the board will set the matter for reconsideration at the board's next regularly scheduled meeting or at a special meeting called for the purpose, at the chairman's discretion. Upon reconsideration by the board, the board will notify the applicant

or qualifying entity of the board's decision, in writing, within five working days of the decision. The decision of the board on reconsideration is final. A request for reconsideration not timely or properly made will not be considered by the board.

[19.25.10.14 NMAC - Rp, 19.25.10.14 NMAC, 7/31/08; A, 5/28/10]

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 |
| Issue Number 8 | April 16 | April 30 |
| Issue Number 9 | May 3 | May 14 |
| Issue Number 10 | May 17 | May 28 |
| Issue Number 11 | June 1 | June 15 |
| Issue Number 12 | June 16 | June 30 |
| Issue Number 13 | July 1 | July 15 |
| Issue Number 14 | July 16 | July 30 |
| Issue Number 15 | August 2 | August 16 |
| Issue Number 16 | August 17 | August 31 |
| Issue Number 17 | September 1 | September 15 |
| Issue Number 18 | September 16 | September 30 |
| Issue Number 19 | October 1 | October 15 |
| Issue Number 20 | October 18 | October 29 |
| Issue Number 21 | November 1 | November 15 |
| Issue Number 22 | November 16 | December 1 |
| Issue Number 23 | December 2 | December 15 |
| Issue Number 24 | December 16 | December 30 |

The New Mexico Register is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the New Mexico Register twice a month pursuant to Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.