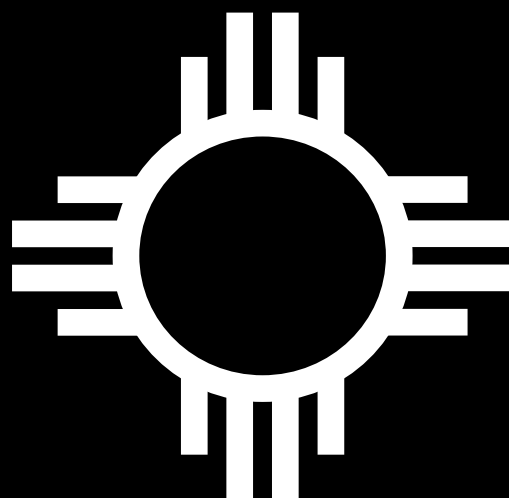


# **NEW MEXICO REGISTER**

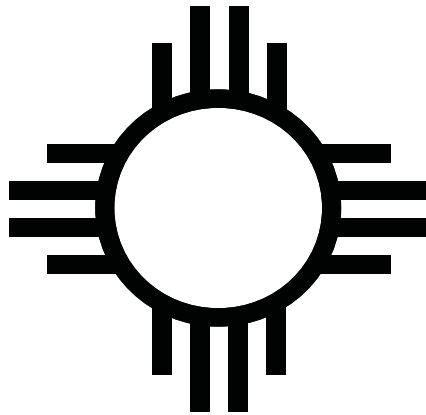


Volume XXI  
Issue Number 11  
June 15, 2010



# **New Mexico Register**

**Volume XXI, Issue Number 11**  
**June 15, 2010**



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

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

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# New Mexico Register

Volume XXI, Number 11

June 15, 2010

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#### Effective Date and Validity of Rule Filings

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

*A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered*

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## Notices of Rulemaking and Proposed Rules

### NEW MEXICO 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 Friday July 16, 2010 from 10-11 a.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 5.7.14 NMAC New Mexico Competitive Scholarship Program

5.7.14.8 NMAC Subsection H to be removed

5.7.14.13 NMAC Subsection A: removal of small in the first sentence and removal of the rest of paragraph.

Copies of the proposed rule changes may be obtained from the Department. Written comments and questions concerning the rules identified with (5.7.14 NMAC) should be submitted to Karen Kennedy, Director of Financial Aid, 2048 Galisteo Street, Santa Fe, NM 87505, by facsimile at (505) 476-8454, or via electronic mail at: [Karen.kennedy@state.nm.us](mailto:Karen.kennedy@state.nm.us). Comments will be accepted until 5 p.m. on June 15, 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 BEHAVIORAL HEALTH SERVICES DIVISION

NEW MEXICO HUMAN SERVICES  
DEPARTMENT  
BEHAVIORAL HEALTH  
COLLABORATIVE

#### NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting new rules for the Behavioral Health Collaborative. The hearing will be held at 10:00 A.M. on Wednesday, July 28, 2010. The hearing will

be held at the Human Services Department, Large Conference Room, 37 Plaza La Prensza, Santa Fe, NM.

The Human Services Department, on behalf of the Behavioral Health Collaborative as authorized in Section 9-7-6.4 NMSA 1978, is proposing rules that include (a) standards of delivery for behavioral health services provided through contracted behavioral health entities; and (b) make a process for approval of behavioral health entity contracts and contract amendments by the Collaborative, including public notice of the proposed final contract.

The proposed regulation is available on the Human Services Department website at <http://www.bhc.state.nm.us/BHNews/index.html>. Individuals wishing to testify or requesting a copy of the proposed regulation should contact the Behavioral Health Services Division, P.O. Box 2348, Santa Fe, NM 87505-2348, or by calling 505-476-9252.

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

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

You may send comments electronically to: [karen.meador@state.nm.us](mailto:karen.meador@state.nm.us) or by Fax to (505) 476-9252.

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) cancelled the public hearing originally scheduled for June 29, 2010 and is rescheduling it for July 15, 2010 at 9:00 a.m. 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 September 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 21<sup>st</sup> 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., July 15, 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](http://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 PUBLIC EDUCATION DEPARTMENT**

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

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at

LOCATION: Mabry Hall, Jerry Apodaca Education Building, Santa Fe, NM 87501

DATE: Friday, July 16, 2010

TIME: 12:00 pm until 2:00 pm

The purpose of the public hearing will be to obtain input on the following rule: **6.75.2 NMAC RELATING TO THE PUBLIC EDUCATION DEPARTMENT INSTRUCTIONAL MATERIAL BUREAU.** The proposed action is clarification of certain reporting rules; clarification of reimbursement for Summer Review Institute participants; and clarification of relationship between PED and Regional Review Centers

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Sally A. Wilkinson, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([sally.wilkinson@state.nm.us](mailto:sally.wilkinson@state.nm.us)) (505) 476-0315 fax (505) 827-6411. Written comments must be received no later than 5:00 p.m. on July 16, 2010. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed replacement rules may be accessed on the Department's website (<http://ped.state.nm.us/>) or obtained from Cia Tapia, Administrative Assistant, Instructional Material Bureau, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, e-mail [cesaria.tapial@state.nm.us](mailto:cesaria.tapial@state.nm.us), phone (505) 827-6415, fax (505) 827-6411.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or

participate in this meeting are asked to contact Ms. Tapia as soon as possible. The Department requires at least ten (10) days advance notice to provide requested special accommodations.

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

#### NOTICE OF PROPOSED RULEMAKING

The Public Education Department hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on July 23, 2010, from 9:00 a.m. to 10:00 a.m. The purpose of the public hearing will be to obtain input on the following rule:

Rule Number	Rule Name	Proposed Action
6.29.4 NMAC	Standards for Excellence English Language Arts	Amending
6.29.7 NMAC	Standards for Excellence Math	Amending
6.29.13 NMAC	Language Arts Common Core Standards	New
6.29.14 NMAC	Math Common Core Standards	New

Interested individuals may testify either at the public hearing or submit written comments regarding the proposed rulemaking to Kristine Meurer, Director, School and Family Support Bureau, Public Education Department, CNM Workforce Training Center, 5600 Eagle Rock Ave. NE, Room 201, Albuquerque, NM 87113, Fax (505) 222-4759, e-mail: [Kristine.meurer@state.nm.us](mailto:Kristine.meurer@state.nm.us).

Written comments must be received no later than 5:00 p.m. on July 23, 2010. However, submission of written comments as soon as possible is encouraged.

The text of the proposed rulemaking actions may be accessed on the Department's website (<http://ped.state.nm.us>) or obtained from Kristine Meurer, Director, School and Family Support Bureau, Public Education Department, CNM Workforce Training Center, 5600 Eagle Rock Ave. NE, Room 201, Albuquerque, NM 87113, Fax (505) 222-4759, e-mail: [Kristine.meurer@state.nm.us](mailto:Kristine.meurer@state.nm.us). 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 Kristine Meurer ([kristine.meurer@state.nm.us](mailto:kristine.meurer@state.nm.us)) or (505) 827-4748 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

### STATE RECORDS CENTER AND ARCHIVES

#### Notice of Public Hearing

The State Records Administrator, New Mexico State Records Center and Archives will hold a public hearing at 9:00 a.m., on Thursday, June 17, 2010 at the State Records Center and Archives building, Commission Room, 1209 Camino Carlos Rey, Santa Fe, New Mexico 87507. The public hearing will be held to solicit comments on the following:

#### Amendments

- 1.13.2 NMAC Fees
- 1.13.5 NMAC New Mexico Historical Records Grant Program Guidelines
- 1.14.2 NMAC Microphotography Systems, Microphotography Standards

#### Repeal

- 1.25.10 NMAC Publications: Filing, Distribution, Format and Style

#### New - Replacement

- 1.25.10 NMAC Publications: Filing, Distribution, Format and Style

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 Solano at 476-7902 by June 10, 2010. Proposed rules can be viewed at <http://www.nmcpr.state.nm.us> and can also be provided in various accessible formats. For additional assistance please contact Antoinette L. Solano at 505 476-7902 or by e-mail at [antoinettel.solano@state.nm.us](mailto:antoinettel.solano@state.nm.us)

## NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION )  
 OF PROPOSED AMENDMENTS TO )  
 THE COMMISSION'S CORPORATION )  
 RULES, )

Docket 10-00052-CO

ADMINISTRATIVE SERVICES DIVISION )  
 STAFF OF THE PUBLIC REGULATION )  
 COMMISSION, )  
 Petitioner. )

NOTICE OF HEARING

**THIS MATTER** comes before the New Mexico Public Regulation Commission ("Commission") upon its own motion; whereupon, being duly informed,

**THE COMMISSION FINDS AND CONCLUDES:**

On May 27, 2010, the Commission issued a Procedural Order in this rulemaking proceeding. That Order provided, among other things, that an additional hearing would be held for the purpose of meeting statutory rulemaking requirements pursuant to NMSA 1978, Section 8-8-15 that apply to the Commission's Notice of Proposed Rulemaking and proposed rule amendments (issued in this Docket on March 11, 2010).

**IT IS THEREFORE ORDERED:**

A. An additional public hearing on the proposed rule amendments, to be presided over by Commission Chairman David W. King or his designee, shall be held **on July 15, 2010 at 1:00 P.M. (or at the conclusion of the Commission's regular open meeting on that date, whichever is earlier)**, at the offices of the Commission, at the following location (*see top of next page*):

**4th Floor Hearing Room  
 1120 Paseo de Peralta  
 Santa Fe, New Mexico 87501  
 Tel. 1-888-4ASK-PRC (1-888-427-5772).**

B. A copy of the proposed rule to be considered for permanent promulgation is attached to the NOPR as "Exhibit 1." Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya  
 NMPRC Records Management Bureau  
 1120 Paseo de Peralta  
 Santa Fe, New Mexico 87501  
 Telephone: 1-888-427-5772.

C. Persons interested in attending the hearing should contact the Commission at 1-888-4ASKPRC (1-888-427-5772) for confirmation of the hearing date, time and place, because hearings are occasionally rescheduled.

D. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Cecilia Rios at (505) 827-4501, at least 48 hours prior to commencement of the hearing.

E. This Order is effective immediately.

F. A copy of this Order shall be served upon each person listed on the attached Certificate Of Service. Copies of this Notice shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.

G. In accordance with 17 NMAC 1.2.32.2.2, this Order is being signed by the Chairman of the Commission or by another Commissioner.

**ISSUED under the Seal of the Commission at Santa Fe, New Mexico this 1<sup>st</sup> day of June, 2010.**

**NEW MEXICO PUBLIC REGULATION COMMISSION**

**COMMISSIONER**

## NEW MEXICO PUBLIC REGULATION COMMISSION

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION )  
 OF PROPOSED AMENDMENTS TO )  
 THE COMMISSION'S CORPORATION )  
 RULES, )

Docket 10-00052-CO

ADMINISTRATIVE SERVICES DIVISION )  
 STAFF OF THE PUBLIC REGULATION )  
 COMMISSION, )  
 Petitioner. )

NOTICE OF PROPOSED RULEMAKING,  
ADOPTION OF EMERGENCY RULE, AND  
NOTICE OF HEARING

**NOTICE IS HEREBY GIVEN** that the New Mexico Public Regulation Commission ("NMPRC" or "Commission") proposes to amend its existing rules regarding corporations that are currently codified in the New Mexico Administrative Code ("NMAC") at 12.3.1 NMAC. This matter comes before the Commission upon the Staff Petition For Issuance Of Notice Of Proposed Rulemaking And To File The Proposed Rule As An Emergency Rule that was filed on March 8, 2010; whereupon, being duly advised,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Commission is charged, among other things, with "adopt[ing] such reasonable administrative, regulatory and procedural rules as may be necessary to carry out its powers and duties" consistent with the Commission's jurisdiction as provided in the New Mexico Constitution, Art. XI, Section 2, and other applicable law. NMSA 1978, Section 8-8-4(B)10.

2. On March 8, 2010, the Corporations Bureau Staff of the Commission's Administrative Services Division ("Staff") filed the Staff Petition For Issuance Of Notice Of Proposed Rulemaking And To File The Proposed Rule As An Emergency Rule ("Staff Petition"). In that Petition, Staff asserts that the Commission's existing rules regarding corporations, as currently codified, include a prohibition against electronic filing and payment. Staff states that on March 4, 2010, Staff told the Commission that Staff would like to begin accepting certain documents electronically and for those documents that are filed electronically, payments using electronic check beginning April 23, 2010.

3. Attached to the Staff Petition is a rule proposed by Staff that would, if adopted, amend the Commission's rules regarding corporations.

4. Staff points out that, under normal rulemaking timeframes, a public comment rulemaking hearing could not be held until May 1, 2010, and the earliest date when the rule could take effect would be May 16, 2010, almost one month after Staff would like to begin accepting electronic filing and payment for certain documents. Petition at ¶ 6, citing NMSA 1978, Section 8-8-15(E) and publication deadlines for the *New Mexico Register*.

5. Staff further notes that, under the Public Regulation Commission Act:

C. If the [C]ommission finds that immediate adoption, amendment or suspension of a rule is necessary for the preservation of the public peace, health, safety or general welfare, the [C]ommission may dispense with notice and public hearing and adopt, amend or suspend the rule as an emergency. The [C]ommission's finding of why an emergency exists shall be incorporated in the emergency rule, amendment or suspension filed with the state records center. Upon adoption of an emergency rule that is intended to remain in effect for longer than sixty days, notice shall be given within seven days of filing the rule as required in this section for proposed rules. Petition at ¶ 7, quoting NMSA 1978, Section 8-8-15 C.

6. Staff requests that the Commission issue a notice of proposed rulemaking to consider the proposed amendments to Commission Rule 12.3.1 NMAC and file the proposed rule at the New Mexico State Records Center and Archives as an emergency rule.

7. In support of its request for emergency publication, staff states, "Staff strongly believes that the changes to its rules and procedures to allow for the electronic filing and payment of certain documents will not be controversial and that the public's general welfare and interest in not delaying the implementation of the proposed amendments outweighs the public's interest in holding a hearing prior to implementation of the rule. Staff states that it "has served copies of this petition on the PRC's Corporations Advisory Committee; the ten Agents for Service of Process that provide the majority of process services for New Mexico corporations; the PRC's General Counsel; each Commissioner, and the New Mexico Attorney General." Petition, ¶¶ 8-9.

8. A rulemaking should be commenced concerning whether and how the Commission's rules regarding corporations, as currently codified at 12.3.1 NMAC, should be amended.

9. The rulemaking should be conducted, and any rule amendments adopted, under the authority granted the Commission by the New Mexico Constitution, art. XI, Section 2, the Public Regulation Commission Act (*see* NMSA 1978, Sections 8-8-4 and 8-8-15), and applicable portions of Chapter 53, NMSA 1978, specifically including NMSA 1978, Section 53-2-11.

10. This Notice of Proposed Rulemaking should constitute due and lawful notice to all potentially interested parties.

11. The Commission's proposed rule should be Staff's proposed rule.

12. A copy of the proposed rule to be considered for promulgation is attached hereto as "Exhibit 1." The proposed rule has been formatted for inclusion in the New Mexico Administrative Code ("NMAC") pursuant to NMSA 1978, Section 14-4-3. Additional copies of the proposed rule can be obtained from:

Mr. Ron X. Montoya  
 NMPRC Records Management Bureau  
 1120 Paseo de Peralta

Santa Fe, New Mexico 87501

Telephone: 1-888-4ASK-PRC (1-888-427-5772).

13. Pursuant to the authority granted to the Commission under NMSA 1978, Section 8-8-15(C), the Commission finds that immediate adoption of an amended rule is necessary for the preservation of the general public welfare because the existing rule does not provide for electronic filing, which is necessary for the preservation of the general public welfare. Accordingly, the Commission, for the limited purposes of this rulemaking, should dispense with notice and public hearing and should adopt an amended rule as an emergency rule. The rule so affected is 12.3.1 NMAC. Notwithstanding, in accordance with other applicable provisions of NMSA 1978, Section 8-8-15, the Commission should hold a hearing regarding the emergency rule *post hoc*, at the earliest convenient opportunity.

14. The Commission's finding of why an emergency exists should be incorporated in the emergency rule amendment filed with the State Records Center.

15. Because the emergency amended rule to be adopted is intended to remain in effect for longer than sixty days, notice should be given within seven days of filing the rule as required pursuant to NMSA 1978, Section 8-8-15.

#### IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this Docket concerning whether and how this Commission's rules regarding corporations, as currently codified in the New Mexico Administrative Code ("NMAC") at 12.3.1, should be amended.

B. This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested parties.

C. The Certificate Of Service for this proceeding shall include all persons and entities indicated by the Corporations Bureau Of The Commission's Administrative Service Division Staff to be involved with matters that may be affected by the rule amendment within the State of New Mexico. See Staff Petition at ¶ 9.

D. A public hearing on the proposed rule amendments, to be presided over by Commission Chairman David W. King or his designee, shall be held **on May 25, 2010, immediately after the conclusion of the Commission's open meeting or beginning at 1:00 P.M.**, whichever is earlier, at the offices of the Commission, at the following location:

**4<sup>th</sup> Floor Hearing Room  
1120 Paseo de Peralta**

**Santa Fe, New Mexico 87501**

**Tel. 1-888-4ASK-PRC (1-888-427-5772).**

E. Persons providing

public comment and/or participating in any of these public hearings are encouraged to provide specific comment on the proposed rule. Commenters are also encouraged to address any other topic that may be relevant to this rulemaking.

F. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at (505) 827-4501 at least 48 hours prior to the commencement of the Hearing.

G. In accordance with NMSA 1978, Section 8-8-15(B), this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be mailed **at least thirty days prior to the hearing date** to all persons who have made a written request for advance notice.

H. Copies of this *Notice of Proposed Rulemaking*, including Exhibit 1, shall be e-mailed to all persons on the attached Certificate Of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.

I. In addition, this Notice shall be posted on the Commission's official Web site.

J. Copies of any forthcoming final order adopting rule amendments shall be mailed, along with copies of the particular rules amended, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this Docket, and to all individuals requesting such copies.

K. This *Notice of Proposed Rulemaking* is effective immediately; *provided*, that the emergency rule as attached shall become effective upon filing at the State Records Center.

**ISSUED** under the Seal of the Commission at Santa Fe, New Mexico, this 11<sup>th</sup> day of March, 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 DEPARTMENT OF TRANSPORTATION TRANSIT AND RAIL DIVISION

#### THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

#### NOTICE OF PUBLIC HEARING

The New Mexico Department of Transportation (NMDOT) will hold a public hearing for the purpose of receiving oral and written public comment on Rule Number 18.14.4 NMAC, New Mexico Department of Transportation Grade Crossing Procedures and Standards. The purpose of the proposed rule is to establish procedures and standards for all existing and any new grade crossings on New Mexico State Transportation Commission or New Mexico Department of Transportation owned land and railroad tracks.

The hearing is scheduled on July 20, 2010, from 12:30 p.m. to 5:00 p.m. at the New Mexico Department of Transportation, General Office, Training Rooms 1 and 2, located at 1120 Cerrillos Road, Santa Fe, New Mexico. Please contact Frank Sharpless, Transit and Rail Division, New Mexico Department of Transportation, P.O. Box 1149, SB 4, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-0906 to request a copy of the rule.

The hearing will be held before William (Tim) Harris, NMDOT Rail Manager. Interested persons may also present their views by written statements submitted on or before July 13, 2010, to New Mexico Department of Transportation, P.O. Box 1149, SB 4, Santa Fe, New Mexico 87504-1149, Telephone (505) 827-0906.

Any individual with a disability who is in need of an auxiliary aid or service to attend or participate in the hearing, or who needs copies of the proposed rule in an accessible form may contact Frank Sharpless at (505) 827-0906 at least ten (10) days before the hearing.

#### End of Notices and Proposed Rules Section

## Adopted Rules

### NEW MEXICO DEPARTMENT OF CULTURAL AFFAIRS LIBRARY DIVISION

This is an amendment to 4.5.2 NMAC Sections 6, 7, 8, 9, 10, 11, 12, 13 and 14, effective 6/15/2010.

**4.5.2.6 OBJECTIVE:** The objective of this rule is to describe the state grants in aid to public libraries program (hereinafter "the library grants state aid program") and to establish criteria for reviewing and awarding the grants. The purpose of the library grants state aid program is to provide financial assistance that encourages and supports public library service by public libraries and developing public libraries. The library grants state aid program is intended to supplement and encourage local effort in providing local library service. The library grants state aid program consists of developing library grants and public library grants that may be used for: library collections; library staff salaries; library staff training professional development; library equipment; or other operational expenditures associated with delivery of library services.

[4.5.2.6 NMAC - Rp, 4.5.2.6 NMAC, 7/1/2009; A, 6/15/2010]

#### **4.5.2.7 DEFINITIONS:**

**A. "Annual report"** means a report sent once a year from a public library to the state library. An annual report shall:

- (1) provide information in the time, manner and form prescribed by the state library;
- (2) cover one fiscal year's activities including income, expenditures, statistics on collections and services, and compliance with library grants state aid program criteria;
- (3) be certified by the library as to the accuracy, completeness, and truthfulness of the information provided;
- (4) be approved by and on file at the state library.

**B. "Basic developing library services"** means free services provided by a developing library to its legal service area that include circulating collections; basic reference collection and services; educational programs and interlibrary loan services.

**C. "Basic public library services"** means free services provided by a public library to its legal service area that include circulating collections; basic reference collection and services; educational

programs; interlibrary loan services; and public access computers connected to the internet.

**D. "Basic reference collection"** means materials listed in the basic reference list published periodically by the state library.

**E. "Branch/bookmobile"** means an auxiliary service administered by a public or developing library that provides the following:

- (1) separate quarters from the main library;
- (2) a permanent circulating and basic reference collection;
- (3) staff dedicated to the branch or bookmobile;
- (4) open 20 hours per week on an annual basis.

**F. "Collection development policy"** means guidelines used by library staff for making decisions about budget, selection, management and preservation of library collections.

**G. "Community analysis and needs assessment"** means an evaluation of the library's legal service area; its current and future needs; and the library's role in meeting those needs.

**H. "Developing library"** means a New Mexico organization that offers basic developing library services within its legal service area.

(1) A developing library is established either:

- (a) through an ordinance or legal resolution of a subdivision of state government;
- (b) by a contract between a private entity and a subdivision of state government;
- (c) by an Indian nation; or
- (d) as a non-profit corporation.

(2) A developing library is:

- (a) open a minimum of fifteen hours per week on an annual basis;
- (b) open a minimum of two days each week on an annual basis; and
- (c) clearly posts the hours of operation on or near the library.

**I. "Fiscal year"** means July 1 through June 30.

**J. "Legal service area"** means the geographic area for which a library has been established to offer services and from which, or on behalf of which, the library derives income. The legal service area may also include any areas served under written agreement or contract for which the library is the primary service provider. The legal service area includes the entire service area of the library or library system and not merely the general service area of any one branch. The most recent United States census determines the population of the legal

service area if the population figures are given separately for that area. If the census does not have a discreet population figure for the legal service area, then the state library and the library whose population is at issue shall work together to arrive at a mutually acceptable population figure using the most recent census data. If this is not possible, the state library in its sole discretion shall determine the population for the library's legal service area.

**K. "Library board"** means a planning and advisory group for the library comprised of representative members of the community.

**L. "Library collections"** means library holdings for public use. Collections Holdings can include such items as books, videos, sound recordings, and electronic media licensed databases.

**M. "Library equipment"** means equipment associated with the delivery of library services.

**N. "Library staff"** means employees or volunteers whose time is dedicated to delivery of library services.

**O. "Local acquisitions expenditures"** means an amount expended for library collections from any source other than state funding such as library grants state aid program funds or general obligation bond funds. The source of the money may include municipal funds, county funds, tribal funds, or money acquired through donations, fund-raising or grants. This amount shall not include in-kind contributions.

**P. "Long range plan"** means a detailed program to ensure that library services meet the current and future needs of the legal service area. The plan shall include a vision and mission statement as well as goals and objectives.

**Q. "Public library"** means a New Mexico organization that offers basic public library services within its legal service area.

(1) A public library is established either:

- (a) through an ordinance or legal resolution of a subdivision of state government;
- (b) by a contract between a private entity and a subdivision of state government;
- (c) by Indian nation; or
- (d) as a non-profit corporation.

(2) A public library is:

- (a) open a minimum of 25 hours per week on an annual basis; and
- (b) clearly posts the hours of operation on or near the library.

[4.5.2.7 NMAC - Rp, 4.5.2.7 NMAC, 7/1/2009; A, 6/15/2010]

#### **4.5.2.8**

#### **DEVELOPING**

**LIBRARY GRANT:**

**A. Purpose:** To supplement an eligible developing library's budget for up to five years until it meets the minimum requirements for a public library grant.

**B. Description:** The grant awards a minimum of \$1,500 to each eligible developing library. The grant funds shall be used for library collections; library staff salaries; library staff training; library equipment; or other operational expenditures associated with delivery of library services.

**C. Criteria for reviewing and awarding developing library grants:** The staff of the state library shall award developing library grants to developing libraries that have met the following criteria.

(1) Library shall be a developing library.

(2) Library shall have filed an annual report with the state library.

(3) Library shall have received no more than five developing library grants.

(4) Library shall demonstrate financial support from sources other than state funding. A library shall have minimum annual local acquisitions expenditures based upon a per capita amount expended per legal service area population. The schedule of local acquisitions expenditures for a developing library is: \$0.25 per capita in its first year of participation; \$0.50 per capita in its second year; \$0.75 per capita in its third year; \$1.00 per capita in its fourth year; and \$1.25 per capita in its fifth year.

(5) Library shall keep adequate financial and other records to support its eligibility for receiving library grants. At the sole discretion of the state library, such records may be audited annually, or as needed, by the state library or its designated representative.

(6) Library shall be in compliance with all relevant state statutes affecting public libraries.

(7) Library shall have met all requirements for developing library grants in the required timeframes.

(8) [A developing library] Library shall have a designated director.

(9) [A developing library] Library shall have a library board that meets at least two times a year. The meetings shall be held in accordance with the state open meetings law.

(10) Libraries who fail to expend all grant funds during the fiscal year in which they are awarded will not be eligible to receive a state aid grant in the next fiscal year.

[4.5.2.8 NMAC - Rp, 4.5.2.14 NMAC, 7/1/2009; A, 6/15/2010]

#### 4.5.2.9 PUBLIC LIBRARY GRANT:

**A. Purpose:** To

supplement an eligible public library's budget.

**B. Description:** The grants are awarded to all eligible public libraries, branches, and bookmobiles according to the formula detailed in this section after distribution to developing libraries. Each public library shall receive one (1) share in the allocation of funds; each branch or bookmobile shall receive one-half (.5) share in the allocation of funds. The grant funds shall be used for library collections; library staff salaries; library staff training; library equipment; or other operational expenditures associated with delivery of library services.

**C. Criteria for reviewing and awarding public library grants:** The staff of the state library shall review and award public library grants to public libraries that have met the following criteria:

(1) Library shall be a public library.

(2) Library shall have filed an annual report with the state library.

(3) Library shall have been in continuous existence and operation for at least one year.

(4) Library shall demonstrate financial support from sources other than state funding. Library shall have a minimum annual local acquisitions expenditure of \$1.50 per capita of the legal service area population.

(5) Library shall keep adequate financial and other records to support its eligibility for receiving library grants. At the sole discretion of the state library, such records may be audited annually, or as needed, by the state library or its designated representative.

(6) Library shall be in compliance with all relevant state statutes affecting public libraries.

(7) Library shall have met all requirements for public library grants in the required timeframes.

(8) Library shall have a community analysis and assessment, a long-range plan and a collection development policy that are reviewed and updated on a regular basis as determined by the library.

(9) A public library shall have a library board that meets at least two times a year. The meetings shall be held in accordance with the state open meetings law.

(10) Library shall have a designated director.

(11) Libraries who fail to expend all grant funds during the fiscal year in which they are awarded will not be eligible to receive a state aid grant in the next fiscal year.

[4.5.2.9 NMAC - Rp, 4.5.2.8 NMAC, 7/1/2009; A, 6/15/2010]

#### 4.5.2.10 SOURCE OF FUNDS:

The state legislature is the sole source for the

state grants-in-aid to public libraries money. The state library, in its appropriation request to the New Mexico state legislature each year, shall request an amount of money for ~~[distribution through the fund known as]~~ the state ~~[grants-in-] aid [to public libraries]~~ program.

[4.5.2.10 NMAC - Rp, 4.5.2.15 NMAC, 7/1/2009; A, 6/15/2010]

**4.5.2.11 DISTRIBUTION OF FUNDS:** Money from the ~~[library grants]~~ state aid program shall be distributed in the following manner:

**A. Notification:** When the state library's budget is finalized by the department of cultural affairs, the state library shall calculate the grant award for each library. The state library shall send a letter of notification to all eligible public libraries informing them of their grant.

**B. [Invoice] Request for payment:** Each library shall submit ~~[an invoice]~~ a request for payment to the state library requesting payment within 120 days of the letter of notification. Upon receipt of the ~~[invoice]~~ request for payment, the state library shall process the invoice for payment. If a library does not submit the ~~[invoice]~~ request for payment within the required time period, it shall relinquish the grant award and the funds shall revert back to the state library's budget.

**C. Allocation:** Eligible developing libraries shall receive a minimum grant of \$1,500. The remaining funds shall be divided equally among all eligible public libraries, branches and bookmobiles according to the following formula: each public library shall receive one (1) share in the allocation of funds; each branch or bookmobile shall receive one-half (.5) share in the allocation of funds.

**D. Maintenance of effort:** Library's local budget shall not be reduced by its governing body as a result of eligibility for the ~~[library grants]~~ state aid program. Upon demonstrated evidence that such a reduction has occurred, the library shall be ineligible to receive funds from the library grants award for one year after the reduction has occurred.

[4.5.2.11 NMAC - Rp, 4.5.2.16 NMAC, 7/1/2009; A, 6/15/2010]

#### 4.5.2.12 LIMITATION ON FUNDS:

**A.** The amount received and distributed may vary each year depending on the allocation of the state legislature.

**B.** The state library, in its sole discretion, may alter the amount of the library grants if the state legislature allocates an amount that is different than the state library request for the ~~[library grants]~~ state aid program.

C. Funds shall be expended in the fiscal year in which they are awarded. [4.5.2.12 NMAC - Rp, 4.5.2.17 NMAC, 7/1/2009; A, 6/15/2010]

#### 4.5.2.13 ADMINISTRATION OF FUNDS:

A. The state library shall administer the ~~[library grants] state aid~~ program.

B. Awards to Indian nations and non-profit entities shall be made by contract or agreement between the entity and the state library.

[4.5.2.13 NMAC - Rp, 4.5.2.18 NMAC, 7/1/2009; A, 6/15/2010]

#### 4.5.2.14 [APPEALS] APPEAL OR VARIANCE:

A. In the event that any library is denied a ~~[library]~~ grant by the state library or does not meet a requirement of this rule, that library may appeal the decision of the state library or request a variance from the requirement.

B. Such appeal or variance shall be made in writing to the state librarian within thirty (30) days of notification of denial of funds or within (30) days of discovery of non-compliance with a requirement. The appeal or variance should state all facts and conditions relating to the appeal or variance.

C. The appeal or variance shall be considered and ruled upon by the state librarian and a response shall be made within ninety (90) days in writing to the appealing party.

[4.5.2.14 NMAC - N, 7/1/2009; A, 6/15/2010]

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.312.2 NMAC, Sections 5, 6, 8 and 16, effective June 15, 2010. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.000 and 8 NMAC 4.MAD.731 to comply with NMAC requirements.

**8.312.2.5 EFFECTIVE DATE:** February 1, 1995, unless a later date is cited at the end of a section.

[2/1/95; 8.312.2.5 NMAC - Rn, 8 NMAC 4.MAD.000.5 & A, 6/15/10]

**8.312.2.6 OBJECTIVE:** The objective of ~~[these regulations]~~ this rule is to provide policies for the service portion of the New Mexico medicaid program. These policies describe eligible providers, covered services, noncovered services, utilization review, and provider reimbursement.

[2/1/95; 8.312.2.6 NMAC - Rn, 8 NMAC 4.MAD.000.6 & A, 6/15/10]

#### 8.312.2.8 M I S S I O N STATEMENT:

~~[The mission of the New Mexico medical assistance division (MAD) is to maximize the health status of medicaid-eligible individuals by furnishing payment for quality health services at levels comparable to private health plans.]~~ To reduce the impact of poverty on people living in New Mexico and to assure low income and disabled individuals in New Mexico equal participation in the life of their communities.

[2/1/95; 8.312.2.8 NMAC - Rn, 8 NMAC 4.MAD.002 & A, 6/15/10]

#### 8.312.2.16 RESERVE BED

**DAYS:** Medicaid pays to hold or reserve a bed for a resident in a nursing facility to allow for the residents to make a brief home visit, for acclimation to a new environment or for hospitalization according to the limits and conditions outlined below.

A. **Coverage of reserve bed days:** ~~[Medicaid covers six (6) reserve bed days per calendar year for every long term care resident for any reason without prior approval. Medicaid covers an additional six (6) reserve bed days per year with prior approval to enable residents to adjust to a new environment, as part of the discharge plan.]~~ Medicaid covers six reserve bed days per calendar year for every long term care resident for hospitalization without prior approval. Medicaid covers three reserve bed days per calendar year for a brief home visit without prior approval. Medicaid covers an additional six reserve bed days per calendar year with prior approval to enable residents to adjust to a new environment, as part of the discharge plan.

(1) A resident's discharge plan must clearly state the objectives, including how the home visits or visits to alternative placement relate to discharge implementation.

(2) The prior approval request must include the resident's name, medicaid number, requested approval dates, copy of the discharge plan, name and address for individuals who will care for the resident during the visit or placement and a written physician order for trial placement.

B. **Documentation of reserve bed days:** When a resident leaves the NF for any reason, appropriate documentation must be placed in the resident's chart. A physician order must be obtained if residents are hospitalized, request home visits or trial placement.

C. **Level of care determinations:** A new level of care determination must be performed by the MAD utilization review (UR) contractor if a resident is gone from the NF for more

than three [(3)] midnights. An abstract must be completed, including information on the reason for the resident's absence, outcome of the leave and any other pertinent information concerning the leave.

D. **Reimbursement and billing for reserve bed days:** ~~[Reimbursement for reserve bed days to the NF is limited to the rate applicable for the level of care medically necessary for the eligible resident, as determined and approved by MAD or its designee. The reserve bed day reimbursement is equal to fifty percent (50%) of the regular payment rate. Billing for reserve bed days is based on the nursing census, which runs from midnight to midnight. Under normal circumstance, Medicaid pays for the admission day but not for the discharge day. To receive payment for the additional reserve bed days which require prior approval, the provider must attach a copy of the written notification of approval to the claim.]~~ Reimbursement for reserve bed days to the NF is limited to the rate applicable for the level of care medically necessary for the eligible resident, as determined and approved by MAD or its designee. The reserve bed day reimbursement is equal to 50 percent of the regular payment rate for medicaid fee-for-service clients or as otherwise negotiated between the NF provider and the medicaid designated contractor. Billing for reserve bed days is based on the nursing census, which runs from midnight to midnight. Under normal circumstances, medicaid or the medicaid designated contractor, pays for the admission day but not for the discharge day.

[2/1/95; 8.312.2.16 NMAC - Rn, 8 NMAC 4.MAD.731.7 & A, 6/15/10]

### NEW MEXICO MEDICAL BOARD

This is an amendment to 16.10.1 NMAC, adding a new Section 13, effective July 1, 2010.

#### 16.10.1.13 BUSINESS ENTITIES - AUTHORIZATION TO PROVIDE HEALTHCARE SERVICES:

A. **Purpose.** The purpose of this regulation is to clarify and confirm that certain business entities are and have been authorized to provide healthcare services in New Mexico.

B. **Healthcare services-certain business entities.** A business entity formed pursuant to the laws of the state of New Mexico is authorized to provide healthcare services in the state of New Mexico if the healthcare services are provided by or under the direction of persons who are duly licensed to engage in the practice of medicine pursuant to the

provisions of the Medical Practice Act.

**C. Retroactivity.** This section is intended to be a clarification and therefore, it necessarily operates retroactively, as well as prospectively, and is expressly so provided.

[16.10.1.13 NMAC - N, 7/1/10]

## NEW MEXICO MEDICAL BOARD

**This is an amendment to 16.10.4 NMAC, Section 11, effective July 1, 2010.**

**16.10.4.11 ALLOWED COURSES AND PROVIDERS:** The following courses and activities are acceptable for CME credit:

**A. AMA PRA Category 1 Credit™** Clinical courses, lectures or grand rounds certified by an accredited sponsor of the AMA physician's recognition award, **AMA PRA Category 1 Credit™** are acceptable for credit whether taken in an on-site format or taken using the internet.

**B. NEW MEXICO SPECIFIC CME.** Activities certified by the New Mexico medical society (NMMS) continuing medical education committee are acceptable for credit. Up to forty (40) credits in any three-year reporting period are allowed for participation in activities certified as New Mexico specific CME by the NMMS continuing education committee. New Mexico specific CME are issued by the NMMS for service on the New Mexico medical review commission and on the impaired physician committee.

**C. POST GRADUATE EDUCATION.** A maximum of seventy-five (75) credit hours in any three-year reporting period are allowed for participation in a postgraduate education program, which has been approved by the board or by the AMA liaison committee on graduate medical education. This category includes internships, residencies and fellowships.

**D. ADVANCED DEGREES.** Forty (40) credit hours are allowed for each full academic year of study toward an advanced degree in a medical field or a medically related field as approved by the board.

**E. TEACHING.** One credit hour is allowed for each hour of teaching medical students or physicians in a United States medical school, an approved internship or residency or for teaching in other programs approved by the board for a maximum of forty (40) credit hours in any three-year reporting period.

**F. PHYSICIAN PRECEPTORS.** A maximum of thirty (30) hours of credit during a three year reporting period is acceptable for licensed physicians who are acting as preceptors for

students enrolled in an accredited medical or physician assistant school.

**G. PAPERS AND PUBLICATIONS.** Ten (10) hours of credit are allowed for each original scientific medical paper or publication written by a licensee. For acceptance, papers must have been presented to a recognized national, international, regional or state society or organization whose membership is primarily physicians; or must have been published in a recognized medical or medically related scientific journal. Material used in a paper or publication may be given credit one time. A maximum of thirty (30) hours credit may be claimed during each three-year reporting period.

**H. ADVANCED LIFE SUPPORT.** Credit may be claimed during each three-year reporting period for successful completion of ACLS (advanced cardiac life support), PALS (pediatric advanced life support), ATLS (advanced trauma life support), NALS (neonatal advanced life support), and ALSO (advanced life support in obstetrics) courses.

**I. EXPERT REVIEW.** Credit may be claimed by physicians who provide expert services by reviewing investigation cases for the board. A maximum of ten (10) credit hours in any three-year reporting period are allowed for providing expert review.

[16.10.4.11 NMAC - Rp 16 NMAC 10.4.8, 4/18/02; A, 4/3/05; A, 9/27/07; A, 1/2/08; A, 7/1/10]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.1 NMAC Sections 8 and 12, effective 6-15-10, adopted by the State Personnel Board at a meeting on 5-21-10.**

**1.7.1.8 APPROVAL AUTHORITY:**

**A.** Pursuant to the provision of *NMSA 1978, Section 10-9-12(A)* the director shall supervise all administrative and technical personnel activities of the state.

(1) The director, pursuant to direction from the board, will establish a quality assurance review program, and will ensure that a copy of the program is provided to each agency. The board will review the quality assurance review program on an annual basis.

(2) The director shall ensure that all agencies are reviewed, as outlined in the quality assurance review program, which will enable the director the ability to supervise all administrative and technical personnel activities of the state and ensure compliance with the rules. The director shall

submit the findings to the board.

**B.** If it is established that an agency has violated the rules or their agency's policies which require office approval, and they are given adequate opportunity to correct violations and fail to do so, the director may suspend the agency's right to approve such actions as provided in the rules and all such actions will require director approval until the director rescinds the suspension.

**C.** The director reserves the right to assign line authority under these rules so long as such line authority maintains the director's administrative oversight and authority. Such decisions are subject to the board's review. Such authority shall be derived from the director through written instruction which shall specify the responsibility(ies) and accountability(ies) which are being [delegated] assigned.

**D.** The director, with the approval of the board, shall establish criteria governing the requirements which must be met to achieve and maintain line authority status.

**E.** The director may modify or withdraw line authority status. Such decisions are subject to the board's review.

[1.7.1.8 NMAC - Rp, 1 NMAC 7.1.8, 07/07/01; A, 11/14/02; A, 7-15-05; A, 6-15-10]

**1.7.1.12 EMPLOYMENT RECORDS:**

**A.** The director and agencies shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to their own file. Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment when the employee has provided a signed release. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit written rebuttal to any material placed in their employment history. Agencies shall transfer the complete record of an employee's employment history upon inter-agency transfer.

**B.** Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order.

**C.** For the purpose of inspection of public records under **Subsection B of 1.7.1.12 NMAC**, the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to physical

or mental illness, injury or examinations, sick leave and medical treatment of persons ~~[including those confined to any institution]~~; records and documentation maintained for purposes of the *Americans with Disabilities Act* [42 U.S.C. Section ~~[401]~~ 12010 et seq]; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge, ~~[if other than honorable]~~; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; ~~[and] home address and personal telephone number unless related to public business; social security number;~~ laboratory reports or test results generated according to the provisions of **1.7.8 NMAC**; and as otherwise provided by state or federal law.

[1.7.1.12 NMAC - Rp, 1 NMAC 7.1.12, 07/07/01; A, 11/14/02; A, 7-15-05; A, 6-15-10]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.3 NMAC Sections 7 and 8, effective 6-15-10, adopted by the State Personnel Board at a meeting on 5-21-10.**

### 1.7.3.7 DEFINITIONS:

~~[A.]~~ "Classification plan" means a document developed by the director and approved annually by the board, that describes the board's classification philosophy and is the foundation for ensuring consistent application of the philosophy.

[1.7.3.7 NMAC - Rp, 1 NMAC 7.3.7, 07/07/01; A, 11/14/02; A, 7-15-05; A, 6-15-10]

### 1.7.3.8 CLASSIFICATION PLAN:

**A.** The director, pursuant to direction from the board, shall establish, maintain and, in conjunction with state agencies, administer a classification plan for all positions throughout the classified service.

**B.** The board ~~[with review, approve and adopt]~~ establishes a classification through the review, approval and adoption of new or revised classification descriptions.

**C.** The director may authorize the deletion of unused classification descriptions and revisions to classification descriptions if the revision does not necessitate a study.

**D.** The director shall

provide affected parties an opportunity to comment on the creation, revision, and deletion of classification descriptions prior to implementation.

**E.** Agencies may request classification reviews, classification studies and/or classification re-evaluations.

[1.7.3.8 NMAC - Rp, 1 NMAC 7.3.8, 07/07/01; A, 11/14/02; A, 7-15-05; A, 6-15-10]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.4 NMAC Section 8, effective 6-15-10, adopted by the State Personnel Board at a meeting on 5-21-10.**

### 1.7.4.8 PAY PLAN:

**A.** The director, pursuant to ~~[the]~~ direction ~~[of]~~ from the board, shall establish, maintain and, in conjunction with state agencies, administer a pay plan for all positions throughout the classified service, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay band.

**B.** Agencies shall develop and utilize a compensation policy that is in compliance with **1.7.4 NMAC**. Agency compensation policies will be filed with, ~~[and]~~ reviewed by, and approved by the director. Subsequent revisions to the compensation policy shall be filed with, reviewed by, and approved by the ~~[office]~~ director prior to adoption of the policy.

**C.** The board shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.

**D.** The director shall conduct an annual compensation survey that includes total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, regional state government employers, and central, western and southwestern state government employers. The board or director may authorize additional comparison markets when deemed necessary and appropriate.

**E.** Prior to the end of each calendar year, the director shall submit a compensation report that includes a summary of the status of the classified pay system and the results of the annual compensation survey that includes total compensation to the board. The board shall review, adopt and submit this report to the governor and the legislative finance committee.

[1.7.4.8 NMAC - Rp, 1.7.4.8 NMAC, 11/14/02; A, 7-15-05; A, 12-30-05; A, 6-15-10]

## NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.30 NMAC, Sections 6 through 11, effective May 28, 2010.

**1.10.30.6 OBJECTIVE:** ~~[The purpose of this rule is to provide procedures for conducting voting by Native Americans.]~~ The purpose of this rule is to establish procedures for voting on Indian nation, tribe or pueblo lands in New Mexico.

[1.10.30.6 NMAC - N/E, 10-31-08; A/E, 5-28-10]

### 1.10.30.7 DEFINITIONS:

**A. Alternate site** means an alternate early voting location or mobile alternate voting location that is situated on the land of an Indian nation, tribe or pueblo as provided for in this rule.

**B. Ballot** means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

~~[C. Request means a request from an Indian nation, tribe or pueblo for an alternate site.]~~

~~[D. C. Voter]~~ **Voter** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

**D. Costs** means the reasonable monetary fees set by New Mexico law for compensation of personnel who are necessary to run a Native American early voting location.

**E. Voting equipment** means a combination of mechanical, electromechanical or electronic equipment, including software and firmware required to program and control the equipment that is used to tabulate votes.

**F. Precinct board** means one presiding judge, one precinct official and one interpreter/language translator.

[1.10.30.7 NMAC - N/E, 10-31-08; A/E, 5-28-10]

### 1.10.30.8 REQUESTS:

~~[A. Requests. Requests for alternate sites shall be made by the chief executive officer or designee, or by the governing council or body, of an Indian nation, tribe or pueblo. The request need not be in writing, but if the request is not in writing, the county clerk shall keep a record of the request, including the date and the name of the person who made the request. Requests shall be made at least 14 days before early voting commences.]~~

**B. Request responses.** After a request has been received, the county clerk shall acknowledge, in writing, receipt

of the request to the appropriate Indian nation, tribe or pueblo requesting officer, designee, governing council or body. The county clerk shall also provide a copy of the acknowledgement to the secretary of state.] Requests for alternate sites shall be made by the Indian nation, tribe or pueblo in writing to the county clerk no later than the first Monday in November of each odd-numbered year. The request shall specify the location and proposed dates of the requested alternate site.

[1.10.30.8 NMAC - N/E, 10-31-08; A/E, 5-28-10]

### **1.10.30.9 ACTION FOLLOWING RECEIPT OF A REQUEST:**

#### **A. Location of alternate site.**

~~(1) If a county clerk receives a request from an Indian nation, tribe or pueblo with a boundary that is located less than fifteen miles from the office of a county clerk for a county in which the Indian nation, tribe or pueblo is located; the county clerk is strongly encouraged to provide an alternate site.~~

~~(2) If a county clerk receives a request from an Indian nation, tribe or pueblo with a boundary that is located more than fifteen miles from the office of a county clerk for a county in which the Indian nation, tribe or pueblo is located; the county clerk shall provide an alternate site as required by Section 1-5-5.6 NMSA 1978. The county clerk shall coordinate with the chief executive officer or designee of the Indian nation, tribe or pueblo to determine the location of the alternate site.] An alternate site located on the land of an Indian nation, tribe or pueblo shall conform to the same requirements applicable to other alternate voting locations for early voting in the county, except as specified in Section 1-6-5.8 NMSA 1978 and this rule.~~

**B. Staffing of alternate site.** ~~[The county clerk shall ensure that adequate interpreters are available at the alternate site who can speak the language or languages of the Indian nation, tribe or pueblo on whose land the alternate site is located, and who can provide information in that language to voters concerning the voting process, voting requirements, and the candidates and issues on the ballot so as to allow voters to make informed decisions concerning how they wish to vote.] The county clerk shall provide one presiding judge, one precinct official and one federally mandated interpreter/language translator.~~

**C. Hours for operating alternate site.** Except as provided in this subsection, pursuant to Section 1-6-5.7 NMSA 1978, beginning on the third Saturday before election day, an alternate site shall be open for ~~[voting from noon to 8~~

~~p.m. on Tuesdays through Fridays and 10:00 a.m. to 6 p.m.] early voting for at least eight consecutive hours through the Saturday immediately preceding the election. A county clerk may request and the secretary of state may grant a modification of these hours of operation from the secretary of state because of a hardship arising from inadequate facilities, difficulties with making appropriate personnel available or other exigent circumstances, provided the county clerk justifies in writing to the secretary of state the need for a modification.~~

**D. Early voting procedures at alternate sites.** Except as otherwise provided by law, county clerks shall use the same procedures for voting at alternate sites that are used at early voting sites not situated on the land of an Indian nation, tribe or pueblo.

[1.10.30.9 NMAC - N/E, 10-31-08; A/E, 5-28-10]

**1.10.30.10 [ACTION IN THE ABSENCE OF A REQUEST: Establishment of alternate site.** If, prior to the start of registration for voting, the county clerk for a county in which an Indian nation, tribe or pueblo is located and whose boundary is located more than fifteen miles from the office of the county clerk has not received a request from the Indian nation, tribe or pueblo for an early voting site, the county clerk is encouraged to contact the appropriate authority for the Indian nation, tribe or pueblo concerning arranging for an alternate site.] **ALTERNATE SITES, RESPONSIBILITIES OF COUNTY CLERKS AND RESPONSIBILITIES OF SECRETARY OF STATE:**

**A.** The county clerk shall provide all transportation, setup and maintenance of all voting equipment to be used in a Native American early voting location.

**B.** The secretary of state shall sustain the cost of all ballots, provide adequate voting equipment, and reimburse the equivalent cost for early voting site personnel designated in each respective county, which shall consist of one presiding judge, one precinct official and one interpreter/language translator. Said personnel shall be hired and supervised by the county clerk.

**C.** The county clerk shall execute a written agreement with the Indian nation, tribe or pueblo to provide early voting services, personnel and equipment on Indian lands. Such agreement shall indicate hours of operation, dates of early voting and location of the site for the county to maintain early voting locations on Indian lands. The agreement shall be approved by the secretary of state prior to the commencement of early voting.

[1.10.30.10 NMAC - N/E, 10-31-08;

Repealed/E, 5-28-10; 1.10.30.10 NMAC - N/E, 5-28-10]

### **1.10.30.11 VOTING SUPPORT FOR MEMBERS OF INDIAN NATIONS, TRIBES OR PUEBLOS:**

**A. Voting materials in Native American languages.** County clerks in counties covered under 42 U.S.C. Section 1973aa-1a(b) shall provide all registration and voting notices, forms, instructions, assistance, and other information relating to the electoral process in the language or languages of the applicable Indian nation, tribe, or pueblo.

**B. Dissemination of voting information through the media.** If a minority language is historically unwritten, county clerks in counties covered under 42 U.S.C. Section 1973aa-1a(b) shall orally disseminate information relating to the electoral process, including voting procedures and ballot information, in the language of the applicable minority group through public service announcements on radio or television. The public service announcements shall be broadcast during daylight hours on radio and television stations available in the areas where the Indian nations, tribes or pueblos being targeted are located.

~~**C. Staffing of polling places on election day.** The county clerk shall ensure that adequate interpreters are available at election day polling places situated on the lands of Indian nations, tribes or pueblos. The interpreters shall be able to speak the language of the relevant Indian nation, tribe or pueblo, and shall provide information to voters in the relevant language about the voting process, voting requirements and the candidates and issues on the ballot, so as to allow voters to make informed decisions concerning how they wish to vote. The number of interpreters available shall be adequate to accommodate voters who need to use the respective Indian language effectively to cast their ballots.]~~

[1.10.30.11 NMAC - N/E, 10-31-08; A/E, 5-28-10]

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## **End of Adopted Rules Section**

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## Submittal Deadlines and Publication Dates 2010

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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
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Issue Number 22	November 16	December 1
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